

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**(1) UNITED STATES OF AMERICA for the  
Use and Benefit of ICON CONSTRUCTION,  
INC, a Texas Corporation,**

**Plaintiff,**

**vs.**

**(1) UNITED EXCEL CORPORATION,  
a Kansas Corporation, and  
(2) ARCH INSURANCE COMPANY, a  
Missouri Insurance Company,**

**Defendants.**

**Case No.** CIV-19-204-F

**JURY DEMANDED.**

**ORIGINAL COMPLAINT**

Icon Construction, Inc. ("Plaintiff" or "Icon"), pursuant to the Miller Act, 40 U.S.C.A § 3133, *et seq.*, hereby submits this Original Complaint against Defendants United Excel Corporation ("UEC") and Arch Insurance Company ("Arch") to seek payment from Defendants, jointly and severally, under a payment bond issued in relation to a federal construction project on Vance Air Force Base in Enid, Oklahoma, on which UEC served as the "Contractor" and Icon served as a "Subcontractor" to UEC. In support hereof, Use Plaintiff states as follows:

**PARTIES AND JURISDICTION**

1. Icon is a corporation organized and existing under the laws of the State of Texas with its principal place of business located at 1575 Heritage Dr., Suite 100, McKinney, Texas 75071.

2. Defendant UEC is a corporation organized and existing under the laws of the State of Kansas, with its principal office and place of business located at 903 E. 104<sup>th</sup> St., Suite 140, Kansas City 64131.

3. Defendant Arch is a corporation organized and existing under the laws of the State of Missouri, duly authorized to engage in the business of executing surety bonds, with its principal office and place of business in Harborside 3, 210 Hudson Street, Suite 300, Jersey City, New Jersey 07311-1107.

4. This action arises, and this Court has jurisdiction and is the proper venue, under the Miller Act, 40 U.S.C.A § 3133, *et seq.*

### **ALLEGATIONS**

5. On September 30, 2016, UEC contracted in writing with the United States of America to furnish materials and perform the labor for the construction and/or remodel of, *inter alia*, a medical clinic, at Vance Air Force Base in Enid, Oklahoma (“Project”), in accordance with the specifications contained in the Contract, for consideration of \$13,954,718. The Contract was designated Government Contract No. W9127S-13-D-6002-0006 (“Contract”).

6. On October 11, 2016, pursuant to the terms of the Contract, UEC, as principal, and Arch as surety, executed and delivered to the United States of America their payment bond dated October 11, 2016, in the penal sum of \$13,954,718, OMB Control Number: 9000-0045, Expiration Date: 7/31/2019, conditioned as required by the Miller Act, for the protection of all persons supplying labor and materials in the prosecution of

the work provided for in the Contract (the “Bond”). A true and correct copy of the Bond is attached hereto as Exhibit 1.

7. On April 3, 2017, UEC entered into a subcontract with Icon, amended by various change orders thereafter, whereby Icon agreed to furnish certain labor and equipment required for the Project under the Contract, in accordance with the specifications contained in the Subcontract, for consideration of \$807,766.00 (“Subcontract”). A true and correct copy of the Subcontract is attached hereto as Exhibit 2.

8. Icon performed under the Subcontract from September 13, 2017 through March 16, 2018, and complied with all relevant terms and conditions set forth in the Subcontract so as to warrant payment to Icon from UEC as contemplated by the terms of the Subcontract.

9. Specifically, Icon performed labor and furnished materials under the Subcontract as necessary to build, assemble and install a modular building facility on the Project and leased to UEC the modular building facility pursuant to the Subcontract, the total reasonable and agreed value of which was and is \$1,986,294.69. UEC has paid Icon \$516,316.00 for said labor and materials, leaving a balance owed to Icon of \$1,469,978.69.

10. Notwithstanding Icon’s several demands for payment, such balances have not been paid by UEC and there is now justly due and owing to Icon the sum of \$1,469,978.69, the same being the reasonable value of the labor performed and equipment leased by Icon to UEC, less those amounts already paid to Icon as set forth above.

11. UEC breached the Subcontract in that it failed and refused to pay Icon the moneys due it for labor performed and equipment leased, as set forth above.

12. All conditions precedent for the bringing and maintenance of an action under the Miller Act against Defendants UEC and Arch have been performed by Icon and/or have occurred.

13. This action is filed within one year of March 16, 2018, the last date of work performed on the Project pursuant to the Subcontract.

WHEREFORE, the United States of America for the Use and Benefit of Icon Construction, Inc., by and through its undersigned counsel, hereby requests judgment against Defendants United Excel Corporation and Arch Insurance Company, jointly and severally, for the sum of \$1,469,978.69, together with interest from March 16, 2018, and for costs of this action, including reasonable attorney fees.

Dated: March 1, 2019.

Respectfully submitted,

/s/ Joyce W. Lindauer

Texas State Bar No. 21555700  
Joyce W. Lindauer Attorney, PLLC  
12720 Hillcrest Road, Suite 625  
Dallas, Texas 75230  
Telephone: (972) 503-4033  
Facsimile: (972) 503-4034  
Email: [joyce@joycelindauer.com](mailto:joyce@joycelindauer.com)  
*Attorneys for Plaintiff*

Bond No. SU 1138391

<b>PAYMENT BOND</b> <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i> <p style="text-align: center;">October 11, 2016</p>	OMB Control Number: 9000-0045 Expiration Date: 7/31/2019
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Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0045. We estimate that it will take 60 minutes to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.

PRINCIPAL <i>(Legal name and business address)</i>  United Excel Corporation 5425 Antioch Drive Shawnee Mission, KS 66202	TYPE OF ORGANIZATION <i>("X" one)</i> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> INDIVIDUAL  <input type="checkbox"/> JOINT VENTURE         </div> <div> <input type="checkbox"/> PARTNERSHIP  <input checked="" type="checkbox"/> CORPORATION         </div> </div> STATE OF INCORPORATION <p style="text-align: center;">KS</p>
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SURETY(IES) <i>(Name(s) and business address(es))</i>  Arch Insurance Company Harborside 3, 210 Hudson Street Suite 300 Jersey City, NJ 07311-1107  Surety Phone No. 201-743-4000	PENAL SUM OF BOND <i>(Whole numbers only)</i> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 25%;">MILLION(S)</th> <th style="width: 25%;">THOUSAND(S)</th> <th style="width: 25%;">HUNDRED(S)</th> <th style="width: 25%;">CENTS</th> </tr> <tr> <td style="text-align: center;">13</td> <td style="text-align: center;">954</td> <td style="text-align: center;">718</td> <td style="text-align: center;">00</td> </tr> </table> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;">           CONTRACT DATE  <p style="text-align: center;">9/30/2016</p> </div> <div style="width: 48%;">           CONTRACT NUMBER  <p style="text-align: center;">W9127S-13-D-6002-0006</p> </div> </div>	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	13	954	718	00
MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS						
13	954	718	00						

**OBLIGATION:**

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

**CONDITIONS:**

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

**WITNESS:**

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

<b>United Excel Corporation</b>				<b>PRINCIPAL</b>	
SIGNATURE(S)	1.	2. _____ (Seal)	3. _____ (Seal)	Corporate Seal	
NAME(S) & TITLE(S) <i>(Typed)</i>	1. Mark Benne, Project Executive	2. _____	3. _____		

<b>INDIVIDUAL SURETY(IES)</b>					
SIGNATURE(S)	1. _____ (Seal)	2. _____ (Seal)			
NAME(S) <i>(Typed)</i>	1. _____	2. _____			

<b>CORPORATE SURETY(IES)</b>					
<b>SURETY A</b>	NAME & ADDRESS	Arch Insurance Company Harborside 3, 210 Hudson Street Suite 300, Jersey City, NJ 07311-1107	STATE OF INCORPORATION MO	LIABILITY LIMIT \$82,654,000.00	
	SIGNATURE(S)	1.	2. _____		
	NAME(S) & TITLE(S) <i>(Typed)</i>	J. Douglas Joyce, Attorney-in-Fact	2. _____		

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STANDARD FORM 25A (REV. 8/2014)  
 Prescribed by GSA-FAR (48 CFR) 53.2228(c)

# EXHIBIT "1"

CORPORATE SURETY(IES) (Continued)					
SURETY B	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INCORPORATION	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

## INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under 40 U.S.C. Chapter 31, Subchapter III, Bonds. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the words "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

SURPATH 2014

***This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Mortgage, Note, Loan, Letter of Credit, Bank Deposit, Currency Rate, Interest Rate or Residential Value Guarantees.***

## **POWER OF ATTORNEY**

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

**J. Douglas Joyce**

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:

Any and all bonds, undertakings, recognizances and other surety obligations.

Surety Bond Number: SU 1138391

Principal: United Excel Corporation

Obligee: Contracting Division, USACE, Little Rock (W9127S)

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on September 15, 2011, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on September 15, 2011:


VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on September 15, 2011, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company.

SURPATH 2014

In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 11th day of October, 2016.

Attested and Certified

Arch Insurance Company



Patrick K. Nails, Secretary

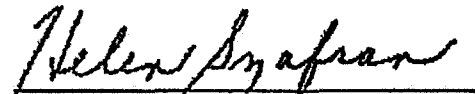
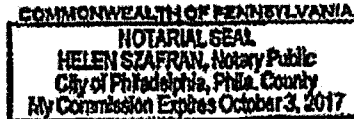


David M. Finkelstein, Executive Vice President

STATE OF PENNSYLVANIA SS

COUNTY OF PHILADELPHIA SS

I, Helen Szafran, a Notary Public, do hereby certify that Patrick K. Nails and David M. Finkelstein personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.



Helen Szafran, Notary Public  
My commission expires 10/03/2017

**CERTIFICATION**

I, Patrick K. Nails, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated October 11, 2016 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said David M. Finkelstein, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 11th day of October, 2016.



Patrick K. Nails, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

**PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:**

Arch Insurance -- Surety Division  
3 Parkway, Suite 1500  
Philadelphia, PA 19102







**Contract for Labor and Material**  
**Between United Excel Corporation and**  
**Icon Construction, Inc**  
**Government Contract #W9127S-13-D-6002-0006**  
UE Project No. UE16-0026

**AGREEMENT**

3 April 2017

**BETWEEN the Contractor:**

United Excel Corporation  
5425 Antioch Drive  
Merriam, KS 66202

**And the Subcontractor:**

Icon Construction, Inc.  
1575 Heritage Dr. Suite 100  
McKinney, TX 75069

**For the Project:**

Vance AFB Clinic Modernization and HVAC Repairs

The Contractor and Sub-Contractor agree as set forth below.

**SECTION 1. NOTICE OF ARBITRATION**

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

**SECTION 2. SCOPE OF WORK**

Contractor and Subcontractor agree that the primary and principal work to be done by Subcontractor is as set forth in the following described portions of the Drawings and Specifications and as the same may be integrated with the other portions of the Contract Documents not specifically herein set forth, such Contract Documents to consist of the Master Owner Contract as amended, and all plans and specifications provided by the Owner to Contractor for the Project:

Provide the necessary labor, material and equipment to furnish and install all work as described in the Contract Documents and as reasonably inferable therefrom and as necessary to produce the intended result. All work shall be in strict accordance with the Contract Documents and the drawings and specifications as listed on the attached Drawings and Specifications Rider.

Work includes but is not limited to the construction and services required by the Contract Documents and this Subcontract, whether completed or partially completed, and includes all labor, material, equipment, services and supplies provided or to be provided by Subcontractor to fulfill Subcontractor's obligations, which constitute the whole or part of the project:

**Provide all labor, material, equipment, supervision and other items necessary to complete the Temporary Phasing Facility (TPF) scope of work as required by the Contract Documents. Work specifically includes, but is not necessarily limited to, the following:**

1. Provide modular building facility (aka "TPF") to the site, assemble building and install building systems as identified herein, warrant functionality of such building systems during occupancy of the facility, and promptly dismantle / remove the building from site upon completion of occupancy.

2. Modular building scope of work is further described as stated in the following Exhibits, attached hereto:
  - a. Exhibit A – Scope of Work Delineation of Responsibilities
  - b. Exhibit B – TPF Floor Plan - Preliminary
  - c. Exhibit C – TPF Site Plan
  - d. Exhibit D – TPF Finish Flooring – Phase 1
3. Design & Engineering
  - a. Provide modular building which meets the current building code for the state of Oklahoma.
  - b. Comply with the following codes / design criteria: IBC, IMC, IPC, ABA/ADA, and UFC 3-600-01, versions of which in effect as of September 30, 2016.
  - c. Provide signed/sealed engineering documents for the scopes included herein.
  - d. Above Grade Foundation engineering with plans and calculations. Foundations based on minimum 2,500 psf soil bearing pressure. Contractor's geotechnical consultant will provide actual recommended soil bearing pressure, for Subcontractor's use.
  - e. Based on meetings with the Contractor and Contractor's Architect, prepare and provide Design Submittal documents as listed below, according to the Project Schedule. Each Design Submittal will be reviewed by Contractor, Contractor's Architect and by the Government, with review comments provided to Subcontractor.
    - i. TPF Design Submittal #1 - 65% Design
    - ii. TPF Design Submittal #2 - 100% Design
    - iii. TPF Design Submittal #3 – 100% Corrected
4. Permits for transportation of modules to site, and return transportation, inclusive of requirements for access into Vance AFB.
5. Protective barricades and safety precautions during transportation of modules to site, including flaggers, traffic control, barricades, lights, shoring or warning signs.
6. Complete building installation, including above grade foundations, seismic restraints, leveling of modular units, removal of shipping walls, removal of hitches, and interior / exterior seams. Removal of tires and axles is at Subcontractor's option.
7. Cleanup of modular building material and debris, including interior construction cleanup, removal of Subcontractor's debris from site, and final cleanup prior to occupancy.
8. Substantial Completion of the TPF facility is determined as beneficial occupancy, which includes an inspection and approval of the facility by the US Army Corps of Engineers and by the Vance AFB Fire Marshal. "Substantial Completion" in terms herein does not include furniture installation or move in.
9. Deficiency items noted during inspections and punchlist items shall be corrected expeditiously in order to avoid impact or delay to occupancy.
10. Following Substantial Completion, modular building shall be leased to Contractor and occupied by the Vance AFB Medical Clinic for a period of 20 months at a monthly lease rate of \$19,000 per month. Occupants may move out of the TPF, and Subcontractor may remove the TPF prior to the end of the 20 month duration, with the permission of Contractor, however in either event the lease payments will continue for the full 20 months after occupancy. In the event the TPF is occupied longer than 20 months, the lease rate, starting with the 21<sup>st</sup> month, is \$17,250 per month.
11. Work shall be completed in a timely manner, according to the Project Schedule. Subcontractor shall provide effective means and measures as may be applicable in order to meet the Project Schedule, such as expediting costs for material delivery and adequate labor forces. Design Submittals shall be provided in accordance to the Project Schedule in order to avoid impacting progress of work.

12. Contractor's contract with the Owner provides that liquidated damages shall be assessed for late completion. Pursuant to this requirement, liquidated damages in the amount of \$522 per calendar day of delay will be deducted from the Subcontractor's contract sum in the event Subcontractor's delay in the work of this Contract causes a delay to the overall completion date for the work of the Contractor's contract with Owner.
13. Compliance with Buy American Act as applicable, as stated in the applicable FAR documents for the project.
14. Compliance with Federal Contract Labor Requirements. Davis Bacon Wage rates and Weekly Certified Payroll submittals are required of Subcontractor for work performed on site, in accordance with the U.S. Army Corps of Engineers' "Instructions to Contractors on Contract Labor Requirements" document, published as "Appendix A, SWFP 1185-1-1, dated August 2000. Contractor shall provide a copy of this document to Subcontractor.
15. Adherence to Contractor's Quality Control Plan which utilizes the 3 phases of control system. This includes, but is not limited to, participation in Preparatory Meetings, Initial and Final Inspections, and documentation of a Activity Hazard Analysis by the Subcontractor. This system will be administered by the Contractor and implemented by the Subcontractor.
16. Mandatory participation in UEC's safety program which includes attendance of a safety orientation by all onsite subcontractor employees prior to performing work.
17. Subcontractor shall comply with the latest version of US Army Corps of Engineers' Safety and Health Requirements Manual, EM 385-1-1. This manual is available at <http://www.hq.usace.army.mil/hqhome/>.
18. Subcontractor is responsible for coordinating and acquiring all security badging required for access to the site.
19. Repair of building system failures or roof leaks during occupancy of the building.
20. Please complete E-Verity documentation per Section 3 of the contract.

Work specifically excludes:

1. Housekeeping during occupancy
2. Site utilities (water, sewer and power)
3. Utility locates and marking of existing site utilities
4. Teledata "backbone" cabling feeding into Communications Room
5. Electronic Door Access Control devices / wiring
6. Concrete sidewalks
7. Exterior or Interior Signage
8. Furniture and office equipment

**SUBCONTRACTORS MUST COMPLY WITH THE ATTACHED INSTRUCTIONS TO CONTRACTORS ON CONTRACT LABOR REQUIREMENTS. FAILURE TO COMPLY AND SUBMIT LABOR PAPERWORK MAY RESULT IN DELAYED PAYMENT.**

### **SECTION 3. SUBCONTRACT DOCUMENTS AND LISTING OF RIDERS**

3.1. This subcontract contains the entire integrated agreement between the parties and supersedes all prior proposals, bids, negotiations, representations and agreements, oral or written, which are merged herein unless specifically identified elsewhere in this Agreement. All additions hereto or changes herein must be in writing to be operative and shall not be binding unless agreed upon in writing. This subcontract includes the Contract Documents between the Owner and Contractor identified herein and the following Riders containing additional terms and conditions of the Subcontract:

- 3.1.1. Drawings and Specifications Rider
- 3.1.2. Schedule Rider
- 3.1.3. Subcontract Job Procedures Rider
- 3.1.4. Equipment Rider
- 3.1.5. Insurance and Bond Rider

- 3.1.6. Subcontracting Plan Rider
- 3.1.7. Unauthorized Aliens Rider
- 3.1.8. Labor Standards Rider
- 3.1.9. Restrictions on Certain Foreign Purchases Rider
- 3.1.10. FAR and DFARS Incorporation Rider
- 3.1.11. Deleted
- 3.1.12. Restrictions on Subcontractor Sales to the Government Rider
- 3.1.13. Toxic Chemical Release Reporting Rider
- 3.1.14. Anti-Kickback Procedures and Limitation on Payments to Influence Rider
- 3.1.15. Overtime Compensation Rider
- 3.1.16. Utilization of IO, IOEE and NH SBC Rider
- 3.1.17. Protecting the Government's Interest Rider
- 3.1.18. Transportation of Supplies by Sea Rider
- 3.1.19. Reporting of Foreign Taxes Rider

The Contract Documents and Riders attached hereto are incorporated herewith and made a part hereof as if fully set forth. In the event of any conflict, the terms of this Agreement shall control, except that those provisions requiring the greater quantity and the higher quality in relation to the Work shall in all instances prevail.

#### **SECTION 4. CONTRACT SUM / PAYMENT / FIXED PRICE**

- 4.1 Contractor agrees to pay Subcontractor for the performance of its work as herein provided the total sum of:

**Eight Hundred Seven Thousand Seven Hundred Sixty-Six Dollars and 00 Cents (\$807,766.00) \*Total sum includes 20 month lease payments**

- 4.2 As said Work progresses, Contractor shall make prompt monthly payments (subject to retention and in proportion to amounts received from Owner for the work of Subcontractor), PROVIDED, HOWEVER, that Subcontractor complies with Contractor's Procedures for Payment, a copy of which are included in SUBCONTRACT JOB PROCEDURES RIDER and Contractor has been paid for that work by Owner. Except where prohibited by local law, payment by Owner to Contractor is a condition precedent to payment to Subcontractor unless the failure to receive payment from Owner is solely caused by the failure of Contractor. This payment provision also applies to the obligations of Contractor's surety under any surety bond issued for the Project.
- 4.3. Final payment to Subcontractor shall be due, within thirty (30) days after Subcontractor's work is fully completed in all respects (including submission of record drawings and operation manuals), finally approved and accepted by Owner and Contractor has been paid for that work by Owner. Except where prohibited by local law, payment by Owner to Contractor is a condition precedent to payment to Subcontractor unless the failure to receive payment from the Owner is solely caused by the failure or default of Contractor. This payment condition also applies to the obligation of Contractor's surety on any surety bond issued for the Project. Such payment shall not affect Subcontractor's warranty obligations. Contractor reserves the right to offset from any payments due Subcontractor on this Subcontract for any sums owed by Subcontractor to Contractor under this or any other contract or transaction between Subcontractor and Contractor.
- 4.4. In the event that owner does not pay Contractor for Subcontractor's work for any reason which is not the fault of Subcontractor, Subcontractor agrees to allow Contractor to exhaust all necessary remedies against owner to collect this sum prior to the institution of any proceedings by Subcontractor against Contractor. Subcontractor further agrees to participate as necessary to support Contractor in such proceedings. In the event that Subcontractor must institute proceedings before all rights and remedies against Owner have been exhausted in order to protect Subcontractor's mechanic's lien or bond filing periods, Subcontractor agrees to stay any enforcement proceedings against Contractor and its surety to allow the parties to first exhaust all

remedies against the owner provided that Contractor and its surety first agree in writing to the tolling of any limitations of actions against themselves for payment on this contract.

- 4.5. Contractor shall have the right to withhold payment from Subcontractor:
- (a) if Contractor is notified of liens or claims of unpaid suppliers, laborers or other bills associated with Subcontractor's performance, including withholding taxes or pension contributions, or penalties thereon in an amount sufficient to fully cover such exposure and Contractor's damages as a result,
  - (b) in addition to the liquidated damages stated in Section 2, paragraph 12 above, out of monies otherwise due to Subcontractor, the sum of the actual cost of Contractor's per day loss for each and every day required to complete the Work beyond the time allowed in this Subcontract or the Project Schedule therefore
  - (c) if Subcontractor defaults in the performance of its obligations and Contractor incurs or reasonably anticipates that it will incur expense as a result (including delay claims from others);
  - (d) any sum due or to become due to Subcontractor regarding any other subcontract or project for which Subcontractor has performed or is performing work for Contractor for the reasons stated above.
- 4.6. Subcontractor agrees that any money received from Contractor on this Project shall be used exclusively for the prosecution of this Project, and none will be diverted to satisfy other obligations of Subcontractor. Subcontractor agrees that all funds received from Contractor shall be treated as trust funds solely for the benefit of the suppliers and sub-subcontractors, and Subcontractor shall have no interest in these payments except to the extent that they exceed the value of the claims of subcontractors, suppliers and laborers for the work performed by them. Contractor shall have the right to issue joint checks to Subcontractor and its lower tier subcontractors and suppliers on this Project when, in the sole discretion of Contractor, joint checks are deemed necessary to fulfill the intent of this Contract.
- 4.7. Acceptance of periodic progress payments by Subcontractor shall constitute a waiver of any and all claims against Contractor and its surety existing at the time of payment unless such claim or claims have been made timely and in writing in accordance with the requirements of this Subcontract.

## **SECTION 5. EXAMINATION OF DOCUMENTS AND SITE / FLOW DOWN**

- 5.1. Subcontractor hereby acknowledges that it has examined: (1) the Contract Documents for the entire Project of which the Work covered by this Subcontract is a part; (2) the site where the Work is to be performed; (3) all approaches and access to the site; and (4) all laws, ordinances, codes or regulations which might affect the Work and all other matters potentially affecting Subcontractor's performance. Contractor makes no representations to Subcontractor, express or implied, regarding site conditions. Subcontractor agrees that it accepts and will be bound by all requirements and conditions of the Contract Documents and this Subcontract, insofar as they relate to the Work covered by this Subcontract, and its work will be in compliance with such documents, including all labor, materials, services, reports, attendance at meetings, tests, working drawings, permits, inspection certificates, indemnities and guarantees, whether specified, indicated, or reasonably intended by all portions of the Contract Documents (herein collectively referred to as "the Work").
- 5.2. Subcontractor agrees to be bound, with respect to its Work, by all the terms and provisions of the Contract Documents by which Contractor is bound to the Owner, and to assume toward Contractor all of the obligations and responsibilities that Contractor by the Contract Documents assumes toward Owner, except as expressly provided herein. Contractor shall have the benefit of all rights, remedies and redress against Subcontractor which Owner, under the Contract Documents, has against the Contractor.

- 5.3. The Work covered by this Subcontract is to be done under the direction of Contractor, and to the satisfaction of Contractor, Owner, and the Architect or Engineer employed by Owner or Contractor, if any. Subcontractor shall not communicate directly with Owner, Architect or Engineer without Contractor's prior written consent.
- 5.4. Contractor's confidentiality obligations with respect to the Owner shall flow down and become obligations of the Subcontractor. Contractor shall maintain all information related to the Work or obtained during the performance of the Work in a confidential manner and shall not disclose any such information except to the extent required to perform the Work hereunder, as required by law or as otherwise permitted by Contractor.

## **SECTION 6. SCHEDULE AND PERFORMANCE OF WORK**

- 6.1. Time is of the essence on the Project. To that end, the Subcontractor agrees that:
- (a) All work must be commenced within two days from Contractor's written Notice to Proceed with the Work to Subcontractor and completed in accordance with the SCHEDULE RIDER.
  - (b) Subcontractor shall at all times schedule and supply the required materials and skilled workmen in sufficient quantities and numbers and with sufficient tools and equipment to perform the Work efficiently and expeditiously using the highest level of skill, care and attention; add extra manpower or shifts as necessary to maintain job progress; and shall cooperate in coordinating its work with other contractors in order that the Work will proceed on the schedule required by the Contract Documents.
  - (c) Subcontractor shall cooperate with Contractor in preparation and adjustment of progress schedules of any type, including CPM scheduling, relating to Subcontractor's Work, and further agrees to carry on the Work within the time set forth therein or in any updating thereof. Non-response to distributed construction schedules constitutes acceptance by Subcontractor of the information shown therein and agreement to adhere to the adjusted schedule.
  - (d) Subcontractor shall not proceed, except at its own risk and expense, if it has reason to believe that the work of any contractor is insufficient or faulty, or will result in any damages or additional costs, or if Subcontractor is aware of any conflicts, discrepancies or errors in the Contract relating to Subcontractor's Work, until it shall have received the written instructions from Contractor with respect to them.
  - (e) Subcontractor agrees to abide by Contractor's Procedures as set forth on SUBCONTRACTOR JOB PROCEDURES RIDER hereto.
- 6.2. Contractor shall have the right to amend or modify schedules, suspend, delay or accelerate the Work, in whole or in part, alter the commencement or execution of the Work and vary the sequence thereof without compensation to the Subcontractor. Subcontractor's remedies shall be in accordance with Section 24 of this Subcontract. All approved changes to the Schedule Rider are incorporated herewith as an integral part of this Subcontract.

## **SECTION 7. ACCEPTANCE OF WORK AND PAYMENT**

- 7.1. No payment, other than final payment by Contractor to Subcontractor, shall constitute an acceptance of any work or material. Final payment shall not constitute a waiver of claims by Contractor, arising from (a) unsettled liens, (b) faulty work or failure to comply with the plans and specifications or failure to perform any warranty or guaranty work, or (c) claims previously made against Subcontractor and still unsettled. Acceptance of final payment by Subcontractor shall constitute a release and waiver of all claims against Contractor, its surety and Owner and Owner's property, except for claims for which notice has been given or which are specifically reserved in final payment. Occupancy or use of the Project prior to final acceptance shall not relieve Subcontractor of its full obligations under this Subcontract.

## **SECTION 8. SHOP DRAWINGS AND SUBMITTALS**

- 8.1 In accordance with Defense Federal Acquisition Regulation Supplement (DFARS) Clause 252.227-7003, (a) Shop drawings for construction means drawings, submitted to the Government

by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract, and (b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

- 8.2. Subcontractor shall submit to Contractor, within the period set forth in the Contract Documents, or as Contractor may reasonably require, complete product data, shop drawings, catalog cuts and/or samples as are required by the Contract Documents. Approval of any such drawings, data catalog cuts and/or samples or other submittals shall not relieve Subcontractor of any responsibility for execution of the Work in accordance with the requirements of the Contract Documents. Such approvals are for the limited purpose of checking for conformance with information given to Subcontractor and the design concept expressed in the Contract Documents. The procedure for submittals is included in the SUBCONTRACTOR JOB PROCEDURES RIDER to this Subcontract.
- 8.3. No substitutions or deviations from the drawings and/or specifications will be allowed except upon written consent of Contractor.
- 8.4. Subcontractor shall furnish maintenance and operation manuals for all equipment, materials and "as built" drawings as required by the Contract Documents.

#### **SECTION 9. PROTECTION OF PERSONS AND PROPERTY**

- 9.1. Subcontractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with its Work, including placement of barricades, warning signs and lights, and for posting all necessary notices and warnings. It shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to the Work, all persons and property which might be affected, whether on or outside the boundaries of the Project.
- 9.2. Subcontractor is required to comply with OSHA requirements for providing fire extinguishers and provide supervision of welding operations and similar sources of fire ignition.
- 9.3. Subcontractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be Subcontractor's superintendent unless otherwise designated in writing by Subcontractor to Contractor.
- 9.4. Subcontractor shall notify Contractor of any injury to its employees, or employees of sub-subcontractors, immediately.
- 9.5. Contractor's Superintendent has the authority to stop the work of any subcontractor not in compliance with this section until such time as the unsafe conditions are corrected.
- 9.6. Subcontractor shall include sub-sections 9.1 through 9.5 above in all its sub-subcontracts. Subcontractor shall nevertheless remain responsible for all record-keeping, notification and posting requirements, and for all violations of law, citations, fines or penalties assessed against any of its sub-subcontractors.
- 9.7. Subcontractor shall keep the Project clean and free from accumulation of trash, rubbish and debris caused by Subcontractor's work.
- 9.8. In accordance with Federal Acquisition Regulation (FAR) Clause 52.236-13
  - (a) The Subcontractor shall provide and maintain work environments and procedures which will—

- (1) Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Subcontractor operations and activities;
  - (2) Avoid interruptions of Government operations and delays in project completion dates; and
  - (3) Control costs in the performance of this contract.
- (b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Subcontractor shall—
- (1) Provide appropriate safety barricades, signs, and signal lights;
  - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
  - (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.
- (c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Subcontractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.
- (d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. Following receipt by the Contractor of such notice from the Contracting Officer, the Contractor shall notify the Subcontractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Subcontractor or the Subcontractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Subcontractor shall immediately take corrective action. If the Subcontractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Subcontractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- (e) The Subcontractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

#### **SECTION 10. AUTHORIZED REPRESENTATIVES**

- 10.1. Contractor shall appoint a Project Manager and a Superintendent with authority to act on its behalf regarding this Project. All communication from suppliers and subcontractors regarding the Project shall come through the Project Manager or his designee. Contractor's Superintendent has authority limited to performing the Project Work as described in the Contract Documents. He is authorized to act on behalf of Contractor to coordinate and supervise the activities of all subcontractors and suppliers. The Superintendent is responsible for assuring compliance with quality and safety standards of the Project.
- 10.2. Subcontractor shall assign to the Work a competent and reliable Project Manager or Superintendent who shall have full and final authority to act for Subcontractor. All notices required to be given to Subcontractor under this or other Contract Documents shall be directed to this Subcontractor representative. This representative is required to attend all job site meetings unless excused by Contractor, and to be prepared to respond to all questions on behalf of Subcontractor. Absence from any meeting constitutes agreement by Subcontractor to comply with all decisions and directives issued during the meeting.

#### **SECTION 11. TEMPORARY FACILITIES AND POWER**



- 11.1. Unless otherwise provided herein, Subcontractor shall furnish all temporary structures, scaffolds, lights, power, utilities, hoists, fuel, expendable supplies, shelters, building or fire protection, and other facilities of every type and description required for the proper, efficient and expeditious execution of the Work. Subcontractor shall obtain Contractor's approval prior to locating any temporary structures on the job site.
- 11.2. Subcontractor shall perform all unloading, hoisting, rigging, and final placement of materials installed under this Subcontract.

## **SECTION 12. CHANGES**

- 12.1. It is agreed that Contractor may at any time by a written order, and without notice to Subcontractor's surety, make changes to this Subcontract and the Work. Subcontractor shall within the period set forth in the Contract Documents, if any, or, if no time sooner is so stated, within ten (10) days after receipt, provide a detailed cost breakdown necessary to comply with such change order and, upon direction of Contractor, comply with change orders without delay. If Subcontractor, for any reason, is unable to provide such cost breakdown within the period stated herein, Subcontractor, within that period, shall notify Contractor of such inability. Contractor and Subcontractor shall then negotiate in good faith for a mutually acceptable time period for Subcontractor to comply. Should notice not be received by Contractor within the time allowed, or submission of a detailed cost breakdown provided within the negotiated extended time period, then any change required shall be performed at no additional cost and with no revision to completions schedule. The responses to proposal change requests shall be submitted in accordance with the Contract Documents.
- 12.2. If such change results in an increase or decrease in the amount due to Contractor by Owner or in the amount of time required for Subcontractor's performance, as allowed by Owner, this Subcontract shall be modified in writing accordingly. Change orders signed by Contractor and Subcontractor shall represent complete agreement on any and all claims for extra compensation or extensions of subcontract time (including, but not limited to, any accumulated impact costs).
- 12.3. No extra work, changes in the work, or changes in the scope of work under this Subcontract will be recognized or paid for unless the same are agreed to in writing before the changes are made, unless Contractor directs Subcontractor to proceed in writing, without such an agreement. Pending such determination, and notwithstanding any dispute under this Subcontract, Subcontractor shall continue with the Work hereunder and proceed to perform the Work directed by Contractor. Failure of Subcontractor to promptly perform all changes whether or not an agreement to a Subcontract adjustment has been reached shall constitute a default. Failure of Subcontractor to obtain a written change order or change directive from Contractor prior to performance of the Work shall conclusively constitute a waiver of any and all claims by Subcontractor for additional compensation or an extension of subcontract time to perform the Work.

## **SECTION 13. PERFORMANCE AND PAYMENT BONDS**

- 13.1. (A) If required by the Contract Documents, or Contractor prior to the signing of this Subcontract, or (B) at the request of Contractor at any time after signing or acceptance of the Subcontract, Subcontractor shall furnish a performance and/or a payment bond in an amount and from a surety satisfactory to Contractor. The premium for such bonds shall be borne and paid by Subcontractor in the event such bonds are required at the time specified in (A) above, and by Contractor in the event such bonds are required at any time specified in (B) above.
- 13.2. The performance and payment bonds must be submitted, in triplicate, on forms acceptable to Contractor. No progress payment, or failure to retain any percentage payable to Subcontractor, or any change in the Work or time of performance, or any other condition of this Subcontract shall

release or discharge to any extent whatsoever Subcontractor's surety, nor shall Contractor have any duty to notify Subcontractor's surety of any such action or inaction.

- 13.3. No payment shall be made to Subcontractor until such bonds are received by Contractor. Should Subcontractor undertake to perform work after bonds have been requested by Contractor, Subcontractor shall do so at the risk of nonpayment in the event that it does not comply with this Section.
- 13.4. Failure to obtain bonds, or to keep same in full force and effect, within three (3) working days after written notice from Contractor, shall constitute a default on the part of Subcontractor.

#### **SECTION 14. INSURANCE AND INDEMNITY**

- 14.1. Subcontractor shall maintain at its expense such workers' compensation, employers' liability, public liability and property damage liability insurance, which includes Contractor and Owner as additional insured's on a primary and non-contributory basis including coverage for products and completed operations, and in such form and in such minimum amounts as may be specified by the INSURANCE AND BOND REQUIREMENTS RIDER, or otherwise prescribed herein by Contractor. Subcontractor shall require each of its sub-subcontractors to procure adequate insurance to cover their portion of the total insurance requirements on INSURANCE AND BOND REQUIREMENTS RIDER.
- 14.2. One (1) copy of certificates of all such insurance shall be submitted to Contractor before this Subcontract shall be valid, and shall contain a provision that the insurance therein listed shall not be canceled or materially changed by the insurance company named therein without giving at least thirty (30) advance written notice of cancellation of any material change, by registered mail to Contractor. No work shall be performed by Subcontractor until evidence of insurance is received by Contractor. In the event of cancellation or any material change, Contractor shall have the option to terminate this Subcontract for default, or to procure the insurance coverage required at Subcontractor's expense and deduct that expense from the Subcontract sum.
- 14.3. Subcontractor and its surety waive any right of subrogation against Contractor and Owner on Builder's Risk or Contractor's Equipment Insurance policies issued in its name. Subcontractor shall require its Sub-Subcontractors to provide similar waivers of subrogation.
- 14.4. To the fullest extent allowed by law, and notwithstanding any such insurance, Subcontractor shall defend, indemnify and hold harmless Owner, Contractor and Owner or Contractor's Designers, and each of them, from and against all liability, loss, cost, expense, including attorney fees, and claims for (a) bodily injuries, including death, disability or disease, to any and all persons whomsoever, (b) property damage, (c) infringement of patent, trademark, license or copyright, and (d) any other damage or expense, including attorneys' fees, arising out of the performance of the Subcontract (including, but not limited to, mechanic's liens, defective performance of the Work, non-conforming work, delays in performance of the Work, and all assessments, fines and penalties from authorities having jurisdiction over the Work), to the extent, caused or alleged to be caused in whole or in part by the acts or omissions of Subcontractor or anyone for whom Subcontractor is legally responsible. It shall not be a defense to Subcontractor's obligations under this paragraph that any other party, including Contractor, is alleged to also be responsible for the loss or damage claimed. Notwithstanding anything above, Subcontractor has no liability to indemnify an indemnitee to the extent that any damages are caused by the acts or omissions of the indemnitee or by anyone for whom the indemnitee is legally responsible and Subcontractor, in any event is only liable for damages to extent Subcontractor or anyone for whom Subcontractor is responsible caused the damage by acts or omissions regardless of the allegations.
- 14.5. Subcontractor's obligations under this Section shall not be limited by any limitation or amount or type of damages, compensation, or benefits payable by or for the Subcontractor under Workmen

or Workmen's Compensation Acts, Disability Benefit Acts, or other employee benefit acts, such immunity and related defenses being expressly waived hereby.

## **SECTION 15. LICENSURE**

- 15.1. Subcontractor represents that, to the extent required by law, it is duly licensed as a construction contractor for the type of work covered by this Subcontract. In the event that Subcontractor shall fail to obtain or maintain required licenses and any cost or loss results to Contractor, Subcontractor shall reimburse Contractor for its expenses, or Contractor may retain from the Subcontract sum funds an amount sufficient to cover such cost or loss.
- 15.2 Subcontractor represents that for any Work undertaken and to the extent required by law, it is duly licensed and accredited as a designer or consultant for the type of work covered by this Subcontract. In the event that Subcontractor shall fail to obtain or maintain required licenses or accreditations and any cost or loss results to Contractor, Subcontractor shall reimburse Contractor for its expenses, or Contractor may retain from the Subcontract sum an amount sufficient to cover any cost or loss to Contractor.

## **SECTION 16. TAXES AND COMPLIANCE WITH LAWS**

- 16.1. Subcontractor shall: (a) bear and pay all taxes (federal, state and municipal payroll, excise, use and sales, and any and all other levies or taxes imposed) related to its Work; (b) secure and pay for all necessary permits and governmental fees, licenses and inspections; and (c) pay any and all contributions or taxes for unemployment insurance, old age retirement benefits, pensions or annuities, now or thereafter imposed by any governmental authority, and all contributions to pension, welfare and benefit plans for persons employed by Subcontractor on work performed under the terms of this Subcontract.
- 16.2. Subcontractor agrees to be fully responsible for complying with all federal, state or local laws, ordinances, rules, regulations, administrative orders, including but not limited to, where applicable, Prevailing Wage Law (40 USC §1341, *et seq.*) (29 CFR 5.5.(a)(1)-(10)); Contract Work Hours and Safety Standards Act (40 USC §327-333); Copeland Anti Kickback Act (18 USC §874) Davis Bacon Act (40 USC §276); Clean Air Act (42 USC §7401, *et seq.*); Federal Water Pollution Control Act (33 USC §1251, *et seq.*); Byrd Anti Lobbying Amendment (31 USC §1352); Americans With Disabilities Act (42 USC §12101, *et seq.*); Age Discrimination in Employment Act (29 USC §621) (29 CFR 1625-27); Family Medical Leave Act (29 USC §2601) (29 CFR Part 825); Immigration Reform and Control Act (29 USC §793); I-9 Requirements; and Occupational Safety and Health Act (29 USC § 651, *et seq.*) and such other laws as are applicable to Subcontractor's performance of the Work under this Subcontract and which are incorporated by reference herein. Subcontractor shall defend, indemnify and hold harmless Contractor on account of any violations by Subcontractor of applicable law. Subcontractor shall include all requirements of this Section and the following FAR clauses in all of its lower tier subcontracts.
- 16.3.1 (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.  
 (b) The Subcontractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Subcontractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in the Contract Documents.

(c) The Subcontractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of the Contract Documents.

- 16.3.2 Subcontractor agrees to provide Contractor with a copy of the E-Verify screen with Subcontractor's information as proof of Subcontractor's enrollment. A presidential executive order and subsequent Federal Acquisition Regulation (FAR) rule requires federal contractors to use E-Verify to electronically verify the employment eligibility of employees working under covered federal contracts. The order and rule reinforce federal government policy that the federal government does business only with organizations that have a legal workforce. Federal Acquisition Regulation (FAR) E-Verify Clause 52.222-54 is incorporated herein by reference.
- 16.3.3 In accordance with Federal Acquisition Regulation (FAR) Clause 52.203-15 (a) the Subcontractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009(Pub. L. 11-5), and (b) the Subcontractor shall include the substance of this clause including this (b) in all subcontracts.
- 16.3.4 Subcontractor acknowledges the incorporation by reference of certain Federal Acquisition Regulations into this Subcontract and shall provide promptly to Contractor, upon request, the information necessary for Contractor to comply with FAR 52.204-10(3), Reporting Executive Compensation and First-Tier Subcontract Awards Requirement, which states, in part:

*52.204-10, Reporting Executive Compensation and First –Tier Subcontract Awards* requirement.

(3) Unless otherwise directed by the contracting officer, by the end of the month following the month of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for each first-tier subcontractor for the subcontractor's preceding completed fiscal year at <http://www.fsrs.gov>, if—

(i) In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

- 16.3.5 In accordance with Federal Acquisition Regulation (FAR) Clauses 52.227-1 & 52.227-2,
1. (a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—
    - (1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or
    - (2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. the entire liability to the Government for infringement of

- a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- (b) The Subcontractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.
2. (a) The Subcontractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Subcontractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in the Subcontractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- (c) The Subcontractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that are expected to exceed the simplified acquisition threshold.

16.3.6 In accordance with Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.204-7000,

- (a) the Subcontractor shall not release to anyone outside the Subcontractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—
- (1) The Contracting Officer has given prior written approval; or
  - (2) The information is otherwise in the public domain before the date of release.
- (b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Subcontractor shall submit its request through the Contractor to the Contracting Officer at least 45 days before the proposed date for release.
- (c) The Subcontractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the Contractor to the Contracting Officer.

## SECTION 17. WARRANTY

- 17.1. Subcontractor, in addition to all other guaranties and warranties contained in this Subcontract or in the Contract Documents, and not in limitation of Contractor's other legal rights, warrants that the Work shall be performed in strict and absolute accordance with the Contract Documents, has been performed in a skillful and workmanlike manner, and that all equipment, material, and articles incorporated into the Work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Subcontractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract. Subcontractor warrants that the Work shall be free from defects or deficiencies not inherent in the quality of work required, and shall, within the applicable warranty period specified in the Contract Documents, remove, replace and/or repair at its own expense and at the option and convenience of Owner, anything done or furnished hereunder with respect to which defects or malfunctions may appear, regardless of expiration of manufacturers' guaranties or warranties, without cost, as directed by Contractor. Subcontractor shall also pay all damages incurred and costs necessary to remove, replace and/or repair any other work which may be damaged in removing, replacing

and/or repairing any portion of the Work. Contractor may demand assurance, by bond or otherwise, from Subcontractor that it will abide by its warranty as specified herein.

#### **SECTION 18. NOTICES/SUBMISSIONS**

- 18.1. All notices and other documents required under this Subcontract or the Contract Documents shall be addressed to the parties' offices located at the address given on the signature page of this Subcontract, with a copy to the Project Office of the parties until such time as they may designate otherwise in writing. All written notices required by this Subcontract or the Contract Documents shall, if mailed, be deemed effective three (3) days after mailing; if hand delivered, they shall be deemed effective upon receipt by the party's Project Supervisor. If Subcontractor submits to Contractor any written notice or submittal which Contractor is then, in turn, required to submit to others, Subcontractor shall provide its written notice or information to Contractor in sufficient time to allow Contractor to prepare and submit its notice.

#### **SECTION 19. INSPECTIONS OF WORK AND CORRECTIONS OF DEFECTS**

- 19.1. Subcontractor shall cooperate in all inspections, and shall provide adequate and safe facilities for such inspections at all times, and at all places, whether on the Project site or elsewhere, of its materials, equipment and work in process. Contractor shall have the authority to reject work which does not conform to the Contract Documents. Subcontractor shall immediately, but in no event later than twenty-four (24) hours after receiving written notice from Contractor, proceed to take down all portions of the Work that are deemed defective under the Contract Documents and shall make good, at its own expense, all work of others damaged or destroyed thereby and replace all such damaged, destroyed or defective work with proper and acceptable work in accordance with the Contract Documents, and diligently proceed with the Work thereafter. If Subcontractor does not make good such work, as provided herein, Contractor, without further notice to Subcontractor, may by appropriate modification make good the deficiencies and deduct the reasonable cost thereof from payment due Subcontractor.

#### **SECTION 20. DEFAULT**

- 20.1. In the event that Subcontractor shall at any time fail to abide by the terms of this Subcontract, including failure to carry out the Work, after receiving five (5) working days receiving written notice thereof; become insolvent, make any assignment for the benefit of creditors, or file or become involved in any reorganization or other proceeding in bankruptcy; or become involved in labor difficulties as a result of Subcontractor's breach of a collective bargaining agreement, Subcontractor shall be deemed to be in default.
- 20.2. In addition to any other rights or remedies, Contractor shall have the right to either cure the particular default by whatever means Contractor deems appropriate while continuing to keep this Subcontract in full force and effect, or to terminate the entire Subcontract. In either event, Contractor shall have the right to take possession of the Work terminated, and complete it by whatever method Contractor may deem most appropriate, and to use whatever materials, tools, or equipment of Subcontractor which are on the premises, which Contractor may need to complete the Work.
- 20.3. Contractor shall have the right to withhold further payment from Subcontractor in an amount sufficient to compensate Contractor for all of its expenses, including administrative expenses, in completing the Work, and should Contractor elect to perform any of this Work itself, it shall be entitled to a reasonable profit as well. If such sum exceeds the amount due to Subcontractor, Subcontractor shall pay the difference immediately. Subcontractor grants to Contractor a security interest in and lien on its tools, appliances, materials and equipment for Contractor's benefit to insure performance of these obligations.

- 20.4. In the event that Contractor terminates the employment of Subcontractor under this Section, Contractor may (but shall not be obligated to) assume obligations, commitments and unsettled claims that Subcontractor has previously undertaken in connection with said Work. Subcontractor shall execute and deliver all such papers and take all such steps, including the legal assignments of Subcontractor's subcontracts, purchase orders and other contractual rights, as Contractor may require for the purposes of fully vesting in Contractor all Subcontractor's right and benefits thereunder.
- 20.5 Any failure of Contractor at any time, to declare Subcontractor to be in default, or to enforce any of the terms or conditions of this Subcontract shall not constitute a waiver of them, or of Contractor's right to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 20.6 In the event that termination of Subcontractor is later determined not to have been at the fault of Subcontractor, then such termination shall be deemed a termination for the convenience of Contractor; and Contractor agrees that for such termination Subcontractor shall be entitled to recover from Contractor the actual costs of performance of the Work in accordance with the Subcontract prior to termination together with a proportionate share of earned overhead and profit. Subcontractor shall be entitled to such costs and damages as are allowable under FAR Parts 31 and 49 for a termination for convenience. This Section provides Subcontractor's exclusive remedy for termination and all other claims and damages are expressly waived by Subcontractor.

#### **SECTION 21. NO-FAULT TERMINATION**

- 21.1. In the event that the Contract between Contractor and Owner is terminated or the Project is halted under the terms of the Contract Documents, or by order of a court or other public authority, then Contractor by written notice shall have the right to terminate and cancel this Subcontract, or any portion thereof which is included in a portion so affected. In such event, Contractor shall not be liable to Subcontractor and Subcontractor expressly waives the right to any claim for any greater sum than that which Contractor receives from Owner or other party on behalf of Subcontractor.

#### **SECTION 22. SUBCONTRACTOR'S LIABILITY FOR DAMAGE OR DELAY**

- 22.1. If any costs, expenses or damages, including liquidated damages, are assessed or recovered against Contractor by Owner or others pursuant to the provisions of the Contract Documents or by law, or Contractor incurs any costs in connection therewith (including attorneys' fees), the same shall be borne and paid Subcontractor to the full extent that Subcontractor shall be responsible for the acts, failures or delays, subjecting Contractor to such liability. However, this section shall not limit Subcontractor's liability to Contractor for Contractor's actual damages caused by Subcontractor, including extended general conditions and consequential damages. In the event that multiple parties are responsible for portions of the delay, Contractor shall have the right to reasonably apportion such damages and such apportionment shall be final, binding and conclusive upon Subcontractor subject to Subcontractor's rights under Section 25. Contractor may thereafter withhold from payment to Subcontractor any such costs, expenses or damages incurred by Contractor or assessed and/or recovered against Contractor.

#### **SECTION 23. LIENS**

- 23.1. Subcontractor shall fully protect, indemnify, defend and hold harmless Contractor and Owner from and against any and all liens, claims, security interests or conditional bills of sale (hereinafter collectively referred to as "liens") of laborers, mechanics, or material men of Subcontractor and subcontractors of Subcontractor.

- 23.2. In the event that any such lien shall be filed, Subcontractor shall promptly remove or discharge same by bonding, payment or otherwise, and if Subcontractor shall fail to bond, remove or discharge the same within five (5) days after delivery of written notice from Contractor, Contractor shall have the right to remove and discharge the same by bonding, payment or otherwise, in its sole discretion, in order to protect its interest and as authorized agent of Subcontractor at the expense of Subcontractor. Subcontractor shall be responsible for payment of Contractor's costs and expenses in connection therewith.

#### **SECTION 24. REQUEST FOR EXTENSION OF TIME FOR DELAY / NO DAMAGES FOR DELAY**

- 24.1. Should Subcontractor's work be delayed or interfered with by any acts of Owner, Contractor or other subcontractor or Contractor, or by any excusable delay allowed to Contractor by the terms of the Contract with Owner, Subcontractor may submit to Contractor a request for extension of time for the performance of this Subcontract. Should Contractor be granted an extension covering such request by Owner, Contractor shall allow Subcontractor's request to the extent allowed by Owner. No allowance for extension of time shall be claimed by Subcontractor or granted by Contractor, unless Subcontractor shall have made written request to Contractor for such an extension within two (2) working days after the cause for such extension occurred, giving full details as to the cause of the alleged delays, and Subcontractor shall have, during each two-week period thereafter within which a delay is claimed, notified Contractor of the number of days for which such extension is requested during such period.
- 24.2. Subcontractor waives the right to claim and recover from Contractor any impact costs or damages for delay, hindrance, interference, or improperly timed activities in the performance of the Work of this Subcontract except as may otherwise be recovered by Contractor for and on behalf of Subcontractor under Section 25. An extension of time for performance of the Work shall be Subcontractor's sole and exclusive remedy for delay, except as otherwise provided herein.

#### **SECTION 25. SUBCONTRACTOR'S DISPUTES RIGHTS**

- 25.1. Subcontractor agrees to make no direct claims against Owner, its agents, servants, employees, and consultants, successors and assigns, concerning the Project or this Subcontract except as otherwise provided herein; and, in such cases, only with Contractor's prior written consent. Subcontractor agrees that all of Subcontractor's rights and claims shall be governed exclusively by this Agreement. If Subcontractor makes a claim of any nature, it agrees to present such claim to Contractor in writing, with full documentation, in time to allow Contractor, if appropriate, to take the action required by Contract Documents for passing through and asserting claims against the Owner. Subcontractor agrees to take all actions required under the Contract Documents concerning submission of claims in sufficient time to allow Contractor an opportunity for review prior to required deadlines. Subcontractor further agrees to cooperate fully in the furnishing of documents, statements, witnesses as Contractor may request. Subcontractor agrees to pay or reimburse Contractor for its share of costs and expenses incurred in connection with any such claim.
- 25.2. As claims ultimately based on the actions or inactions of Owner that are pursued by Contractor to the ultimate final conclusion, it is expressly understood and agreed that as to any and all materials or services furnished or agreed to be furnished by Subcontractor, and as to any and all damages or delays, if any, incurred by Subcontractor in connection with this construction project, Contractor shall be liable to Subcontractor to the same extent that the Owner is liable to Contractor, but never to any greater extent than the Owner is liable to, and has paid, Contractor. If Subcontractor's claim is asserted by Contractor against the Owner, Subcontractor agrees to be bound to Contractor to the same extent Contractor is bound to the Owner by the dispute resolution procedures found in the Contract Documents and the final decision relating to such claim, whether such decision is an administrative determination or a finding of a court or other



tribunal, and whether or not Subcontractor is a party to such proceeding. Receipt of payment from Owner to Contractor for any extra work, damages for delay, suspension of the Work, interest on late payment and any other claims including, but not limited to, termination costs, shall be a condition precedent to the right of Subcontractor to receive payment from Contractor for such costs, damages or claims, unless the extra work was ordered by Contractor solely for the benefit of Contractor or the claim results solely from the fault of Contractor, as long as Contractor promptly and reasonably pursues Subcontractor's claims to a final conclusion. In any event, Subcontractor shall not be entitled to recover unexpended overhead or unearned profit.

- 25.3. If Subcontractor wishes to pursue any proceedings beyond submission of a claim, Contractor agrees to cooperate, provided that Subcontractor fully indemnifies Contractor, against the cost and expense, including attorneys' fees, on account thereof. Contractor assumes no fiduciary duty or responsibility to Subcontractor to prosecute Subcontractor's claim and reserves the right to abandon to Subcontractor any claim by giving notice to Subcontractor that Contractor will no longer prosecute such claim. In such event, Subcontractor shall have the right to prosecute such claim in the name of Contractor, but at Subcontractor's own cost and expense and in the forum required by the Contract Documents. If the claim is denied and there is no further appeals that either Subcontractor or Contractor elects to make or the amount is not recovered or collected, Subcontractor shall release Contractor from any and all liability to Subcontractor for such claim and damages.
- 25.4. Subcontractor agrees to exhaust all remedies which are available to it through Contractor prior to instituting any other dispute resolution procedures; and in the event separate dispute resolution procedures are instituted prior to the exhaustion of such remedies, Subcontractor agrees to stay such procedures pending Contractor's exhaustion of Subcontractor's remedies against Owner. Any stay shall apply equally to Contractor's surety and any mechanic's lien foreclosure action.
- 25.5. No unresolved dispute shall interfere with the progress of construction, and Subcontractor shall proceed with its work as directed by Contractor.
- 25.6. Any and all claims of Subcontractor not passed through and asserted against the Owner as provided in this Section shall be resolved first by mediation with Contractor. The cost thereof shall be borne equally by Subcontractor and Contractor. Either party may demand mediation by written request delivered to the other. Mediation shall proceed promptly but no later than thirty (30) days after written demand unless otherwise agreed to by the parties. The mediator shall be selected by mutual agreement. The location of the mediation shall be Merriam, Kansas, unless an alternate site is otherwise mutually agreed by the parties. If either party refuses mediation under this Section, mediation shall proceed under the administration of the American Arbitration Association, Construction Industry Mediation Rules, and this Section may be enforced in any court of law having jurisdiction thereof. Mediation shall be a precondition to arbitration.
- 25.7. Claims not passed through to the Owner or resolved by mediation shall be resolved arbitration under the administration of the American Arbitration Association and in accordance with the American Arbitration Association Rules for the Construction Industry. Subcontractor must assert in any demand for arbitration all claims then known to Subcontractor on which arbitration is demanded or permitted. Any actions or other proceedings instituted by Subcontractor against the Contractor or its surety or the Owner and its real estate shall be stayed by agreement or, if necessary, by any court of law having jurisdiction thereof, until such time as arbitration hereunder is concluded. The location or venue of the arbitration proceedings shall be Merriam, Kansas, unless an alternate site is otherwise mutually agreed to by the parties. Kansas substantive law shall apply to this Subcontract.
- 25.8. Either Subcontractor or Contractor may consolidate an arbitration with any other arbitration provided that (1) the arbitration agreement governing the other arbitration permits it, (2) the arbitration to be consolidated substantially involves common issues of law or fact, and (3) the arbitrations involved apply materially similar procedural rules and methods of selecting arbitrators.

- 25.9. Either Subcontractor or Contractor may include by joinder any person or entity substantially involved in a common question of law or fact whose presence is required for complete relief provided that such party to be joined consents to such joinder.
- 25.10. Any arbitration award shall be final and binding upon Contractor and Subcontractor and judgment upon such award may be entered in accordance with applicable law by any court having jurisdiction thereof.
- 25.11. This arbitration clause is subject to and controlled by the Federal Arbitration Act.
- 25.12. The costs of any binding dispute resolution exclusive of attorney's fees shall be awarded to the prevailing party as determined by the adjudicator of the dispute.
- 25.13. Contractor shall determine whether the claim or claims submitted by Subcontractor should be a pass through claim or claims to be asserted against Owner under Sections 25.1 through 25.5 above or a claim under Sections 25.6 through 25.12. Contractor's determination shall be final, conclusive and binding upon Subcontractor and not independently subject to either arbitration or litigation. Contractor shall not be required to pass through to Owner any claim of Subcontractor which Contractor deems inappropriate under the Contract Documents or law.

## **SECTION 26. WAIVER OF CONSEQUENTIAL DAMAGES**

Except for liquidated damages provided by this Subcontract, or as a pass through damage from Owner, and excluding losses covered by insurance required by the Subcontract, Subcontractor waives the right to claim and receive any consequential damages from Contractor and agrees to obtain similar consequential damage waivers from its lower tier subcontractors, if any. Consequential damages shall include, but not be limited to, rental expense, loss of use, loss of income, loss of profits, loss of financing, loss of bonding, loss of business and business reputation, loss of management and employee productivity or the services of such persons, expenses of Subcontractor's principal office (including personnel stationed therein), and any other consequential damages due to termination.

## **SECTION 27. CLASSIFICATION OF WORKMEN/IMMIGRATION LAW COMPLIANCE**

Subcontractor shall not misclassify any workmen furnishing labor to Subcontractor under this Subcontract as an independent contractor when such workmen should be classified as an employee under applicable law and, shall not employ workmen on the Project Work site who are not lawfully authorized to perform work under Federal law, including the Immigration Reform and Control Act of 1986.

## **SECTION 28. DESIGN SERVICES**

28.1 Subcontractor shall provide or furnish professional design services only to the extent specifically required by this Subcontract and the Scope of Work; or, if the Subcontractor otherwise needs to provide such services relative to Subcontractor's construction means, methods, techniques, sequences or procedures.

28.2 Subcontractor shall provide or furnish all such services in accordance with applicable local law and with the care of skill ordinarily employed by members of the design profession practicing under similar conditions at the time and locality where the Project is designed and constructed.

28.3 If professional design services by a design professional related to components, systems, materials or equipment are specifically required of Subcontractor by this Subcontract and/or the Contract Documents between Owner and contractor incorporated herewith, Contractor (or Owner or Contractor's design professionals) shall specify for Subcontractor all performance and design criteria that such professional services must satisfy.

28.4 Subcontractor shall cause all such professional services to be furnished by properly licensed design professionals who are licensed to practice their profession as required in the jurisdiction where the Project is located and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such design professional.

28.5 Shop drawings and other submittals related to the Scope of Work designed by such professional, if prepared by others, shall bear such professional's written approval when submitted to Contractor.

28.6 Design professionals furnishing such services shall certify to Subcontractor and Contractor that the documents or services provided and to which the certificates relates: (1) are consistent with the criteria provided by Owner and/or Contractor (except to the extent otherwise noted in the documents); (2) comply with applicable professional practice standards; (3) comply with applicable laws, codes, ordinances, rules or regulations governing such design; and (4) that Subcontractor, Contractor and Owner may rely on such representations contained in the certification.

28.7 All construction documents including technical drawings, specifications, designs, architectural and derivative works (Documents) prepared by Subcontractor, its employees, or Subcontractor's independent design professionals and consultants, whether in electronic form or otherwise, are for use solely with respect to the performance of the Subcontractor's Work and construction of the Project. This provision includes any design services furnished by Subcontractor for the Project prior to the date of this Subcontract Agreement.

Subcontractor shall be deemed the author and owner and shall retain all applicable common law, statutory and other reserved rights, including copyrights, in such Documents; except to the extent that Subcontractor grants to contractor an irrevocable, non-exclusive license, or property right, to reproduce, use and distribute such Documents for the sole purpose of constructing the Project. Such non-exclusive license may be assigned by Contractor to Owner. Subcontractor shall obtain a similar non-exclusive license for contractor, in writing, from its independent design professionals and consultants.

Subcontractor shall defend, indemnify and hold harmless Contractor, and its assignee, of and from, any and all, claims demands, suits on petition or complaint, liability, loss, costs, and expense, including attorneys' fees, arising from or out of any of Subcontractor's services and designs furnished herein, including, but not limited to, any copyright infringement claims of other designers relative to the documents provided herein.

Except as otherwise authorized by Contractor in writing, Subcontractor shall not use, reuse, permit the use or reuse, or furnish to others for use or reuse, either directly or indirectly, the Documents and designs furnished by Subcontractor to contractor pursuant to this Agreement. Subcontractor shall obtain a similar written restriction from its independent design professionals and consultants furnishing design services and Documents for construction of the Project. This restriction on use of Documents and design has been bargained for as part of the consideration of this Subcontract Agreement. Any unauthorized use of the Documents by Subcontractor contrary to this Agreement shall entitle contractor to seek relief in law or equity in any court having jurisdiction thereof in order to enforce the provisions of this Agreement.

28.8 Subcontractor shall furnish evidence to Contractor that Subcontractor and its independent design professionals and consultants have obtained design insurance specified in the Insurance Rider.

## **SECTION 29. ENFORCEMENT**

29.1 Failure or delay of Contractor to require performance of any provision of this Subcontract shall not be deemed a waiver of Contractor's rights to enforce such provision at a later date.

29.2 If any provision of this Subcontract is found unenforceable by any court or other tribunal, Contractor and Subcontractor agree that such provision shall be modified to the minimum extent

necessary to render it enforceable and that the remainder of the Subcontract shall not otherwise be effected.

### **SECTION 30. LOWER TIER SUBCONTRACTORS**

- 30.1 Subcontractor shall identify to Contractor all lower tier subcontractors and shall permit Contractor reasonable objection thereto.
- 30.2 Subcontractor shall require all lower tier subcontractors to be bound to the Contract Documents and this Agreement in the same manner that Subcontractor is bound to Contractor, and Contractor is bound to Owner.

### **SECTION 31. NON-DISCRIMINATION**

During the performance of this contract, the Subcontractor shall comply with Executive Orders 11246 and 13672:

- 31.1 The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contractor setting forth the provisions of this nondiscrimination clause.
- 31.2 The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 31.3 The Subcontractor shall send to each labor union or representative of workers with which Subcontractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contractor, advising the labor union or workers' representative of the Subcontractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, Executive Order 13672 of July 14, 2014, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 31.4 The Subcontractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, Executive Order 13672 of July 14, 2014, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 31.5 The Subcontractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, Executive Order 13672 of July 14, 2014, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 31.6 In the event of the Subcontractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Subcontractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order

11246 of September 24, 1965, Executive Order 13672 of July 14, 2014, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, Executive Order 13672 of July 14, 2014, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 31.7 the Subcontractor will include the provisions of paragraphs 31.1 through 31.7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, Executive Order 13672 of July 14, 2014, so that such provisions will be binding upon each of Subcontractor's subcontractors or vendors. The Subcontractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

## **SECTION 32. GOVERNING LAW**

- 32.1 This Subcontract shall be governed by the laws of the State of Kansas.

## **SECTION 33. ELECTRONIC AND OTHER SIGNATURES**

- 33.1 Contractor and Subcontractor agree that with respect to this Subcontract and any addendums, amendments, change orders or other supplementary documents requiring the signature of the parties, that in lieu of wet ink signatures, electronic signatures are acceptable, shall be binding upon the parties and shall not be denied legal effect, validity and enforceability solely because they are electronic in nature. 'Electronic Signature' means an electronic form, sound, symbol or process, attached to or logically associated with the contract or other record and executed or adopted by a person with intent to sign the record.

## **SECTION 34. NO ASSIGNMENT**

Subcontractor shall not assign this Subcontract or the obligation undertaken by Subcontractor thereunder without the prior express written consent of Contractor.

## **SECTION 35. FORCE MAJEURE**

Neither Contractor nor Subcontractor shall be considered in default of the obligations of this Subcontract to the extent it is established that performance is prevented by circumstances of force majeure which arise after the date of this Subcontract and were not foreseeable. Force majeure shall suspend performance until such circumstances are removed or abated. If not abated within thirty (30) days, Contractor may elect to terminate this Subcontract for convenience. Subcontractor waives any damages and claims for such termination except as otherwise received by Contractor from Owner for or on behalf of Subcontractor.

## **SECTION 36. INTEGRATION CLAUSE**

This Subcontract, together with all documents incorporated by reference, constitutes the entire agreement between Contractor and Subcontractor. All prior or contemporaneous proposals, negotiations, communications, promises, commitments, understandings and agreements, oral or written, are merged herein and superseded hereby. Subcontractor has not relied upon any statement or representation of Contractor to enter into this Agreement.

**Contractor:**  
United Excel Corporation

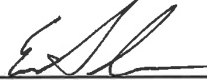


Signature

Tim Rogers, Project Executive  
Printed Name and Title

9/13/2017  
Date

**Subcontractor:**  
ICON Construction, Inc.



Signature

Eric Salomone, Vice President  
Printed Name and Title

12 September 2017  
Date

## Exhibit "A" - Scope of Work Delineation of Responsibilities

Icon Construction Inc.  
 1575 Heritage Drive  
 Suite 100  
 McKinney, Texas 75069  
 Tel: (214) 504-9098  
 Fax (214) 504-9098  
 www.Icon-Construction.com



Project Description: 177' x 60' Modular Building  
 Project Location: Enid, OK  
 Date: 11/2/2016

Responsibility: ☒ X  
 Optional Item: ☐ O

	Icon	Client	NIC
<b>A: Administration</b>			
1 Taxes <b>(Taxes on Materials Only By Icon)</b>	X		
2 Buy America Act	X		
3 Davis Bacon Wage Scale (Site Only)	X		
4 Bid Bonds			X
5 Payment & Performance Bonds			X
6 Terms of Payment <b>(Mutual Agreement, Established Prior to Contract Execution)</b>	X	X	
7 Invoicing Procedure (Per Terms Of Payment)	X		
8 Site Access Security Requirements		X	
9 Site Access Security Submittals For Clearance	X		
10 Building Permits		X	
11 Code & Design Criteria <b>(IBC 2012)</b>	X		
12 Force Protection Requirements Implemented			X
13 Design Submittal Process & Requirements	X		
14 Structural Design w/ Seals <b>(Third Party)</b>	X		
15 Electrical Design	X		
16 Mechanical Design	X		
17 Fire Alarm System Design	X		
18 Fire Sprinkler System Design	X		
19 Water Supply & Flow Testing For Fire Sprinkler System		X	
20 Sub-grade Foundation Design			X
21 Geotech Report			X
22 Site Utility Systems Design			X
23 Interior Furniture Design & Layout			X
24 Site Lighting Design & Layout			X
25 Sub-Floor Ventilation Design	X		
26 Site Survey			X
27 Soils Testing			X
28 Utility Line Location/Dig Testing			X
29 Site Environmental Study			X
30 Storm Water Permits			X
31 Wetlands/Tree Harvesting Permits			X
32 Site Accessibility For Equipment & Unit Delivery		X	
33 Close Out Documents <b>(Modular Building Only, Electronic Format, One Hard Copy If Req'd)</b>	X		
34 Warranty <b>(One Year Modular Building Only, Extended Warranties Available for Purchase)</b>	X		
35 Building Turnover to Client <b>(In an effort to keep the modular building installation cost minimal, Icon with client's representative will perform one final completion building walk through inspection. Items identified as requiring additional attention will be noted and incorporated into a Punch List. Upon compilation and agreement between client and Icon of Punch List items, the items comprising the Punch List will be addressed. Upon completion of the Punch List, the building will be deemed accepted by the client. Any further items requiring attention will be addressed under the Icon warranty program.)</b>	X		
36 Client Renovation During Lease <b>(Any Renovation To Be Approved By Icon Prior To Starting Work. All Workmanship And Materials To Be Consistent With Original Building)</b>		X	

**Icon Construction Inc.**  
 1575 Heritage Drive  
 Suite 100  
 McKinney, Texas 75069  
 Tel: (214) 504-9098  
 Fax (214) 504-9098  
 www.Icon-Construction.com



Project Description: 177' x 60' Modular Building  
 Project Location: Enid, OK  
 Date: 11/2/2016

Responsibility: ☒ X  
 Optional Item: ☐ O

	Icon	Client	NIC
<b>B: Site Work</b>			
1 Stake Site/Building Location	X	X	
2 Confirmation of Site Elevations	X	X	
3 Site Prep ( <b>Assumes Site Level Within 12" Across Building Footprint</b> )		X	
4 Site Demolition (Remove Existing Vegetation, Trees, Utilities, Etc.)			X
5 Site Excavation (Cut/Fill as Required to Level Building Footprint)			X
6 Dust Control			X
7 Excavation For Pit Set Building/Concrete Footings			X
8 Sub-Floor Drainage			X
9 Installation of Foundation System ( <b>Grade Set Pre-Cast Concrete Or ABS Pads</b> )	X		
10 Installation of Modular Building Pier System ( <b>Block Dry Stack Piers</b> )	X		
11 Modular Building Anchoring System	X		
12 Soil Treatment/Termite Control			X
13 Sub-Floor Ventilation System ( <b>Ventilated Skirt</b> )	X		
14 Installation of Perimeter Stem Wall Including Backfill			X
15 Lockable Access Hatch			X
16 Security Fencing/Barricades During Construction			X
17 Dumpsters	X		
18 Portable Toilets	X		
19 Temporary Power & Water During Construction		X	
20 Delivery of Modular Units To Site Including Transportation Permits	X		
21 Staging of Modular Units At Site Awaiting Setup	X	X	
22 Modular Building Setup & Trimout	X		
23 Crane/Rigging If Required For Grade/Pit/Special Set Condition			X
24 Frame and Install Perimeter Skirting ( <b>Material To Match Building Siding</b> )	X		
25 Site Installed Building Finishes			X
26 Site Applied Special Roof Systems			X
27 Site Built Parapets/Mansards			X
28 Site Built External Access Equipment			X
29 Site Installed Gutters & Downspouts	X		
30 Site Installed Building Lightning Protection ( <b>Lightning Rods</b> )	X		
31 Building Broom Clean Prior To Final Inspection			X
32 Final Clean	X		
33 Landings w/ Stairs & Handrails ( <b>Pressure Treated Lumber</b> )	X		
34 Main Entry Handicapped Ramp w/ Handrails ( <b>Pressure Treated Lumber</b> )	X		
35 Dumpster Enclosure & Pad			X
36 Site Fencing			X
37 Sidewalks			X
38 Parking Lot w/ Curbs			X
39 Canopies/Custom Entries/Walkway Covers			X
40 Landscaping Design, Installation, & Irrigation			X
41 Site Accessibility - Site Must Be Available 7 Days/Week 24 Hrs/Day		X	
42 Lease Final Walk Through ( <b>Client Will Be Required To Complete A Walkthrough of The Building With An Icon Representative To Identify Building Condition. Client Will Be Responsible For Repair Cost For Any Damages Not Considered Normal Wear And Tear</b> )	X	X	
43 Lease Tear Down & Remove ( <b>Includes Disconnect &amp; Cap Utility Lines Within Building Footprint. Existing Foundation/Sidewalks/Etc. To Be Left In Place. Icon Will Clear CMU Block/Loose Building Debris From Site. Building Must Be Clear Of Furniture, Fixtures, &amp; Tenant Debris</b> )	X		



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 Fax (214) 504-9098  
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Project Description: 177' x 60' Modular Building

Project Location: Enid, OK

Date: 11/2/2016

Responsibility:	X
Optional Item:	O

	Icon	Client	NIC
<b>C: Domestic Plumbing Site Work</b>			
1 Tap Existing Water Source At Site		X	
2 Run Underground Water From Source To Building Line		X	
3 Water Pump/Water Meter If Required		X	
4 Water Line Disinfecting/Testing		X	
5 Pressure Regulator/Backflow Preventer If Required		X	
6 Manifold Water Lines Of Modular Building To Single Point	X		
7 Final Connection of Domestic Water At Building Line	X		
8 Tap Existing Sewer Lines or Existing Septic Tank At Site		X	
9 Run Underground Sewer From Source To Building Line		X	
10 Sewer Lift Station If Required		X	
11 Manifold Sewer Under Floor Of Modular Building To Single Point	X		
12 Final Connection of Sewer To Single Point at Building Line	X		
<b>D: Gas/Air/Specialty Site Work</b>			
1 Tap Existing Gas Source At Site & Run Underground Gas From Source To Building Line			X
2 Manifold Gas Lines of Modular Building & Final Connection of Gas At Building Line			X
3 Install Air/Vac/Steam/Specialty Systems on Site Near Modular Building			X
4 Install Air/Vac/Steam/Specialty Systems Piping Within Modular Building Including Testing			X
5 Run & Connect Air/Vac/Steam/Specialty Systems to Modular Building			X
<b>E: Electrical Site Work</b>			
1 Tap Existing Power Source at Site		X	
2 Run Underground/Overhead Power From Source To Building		X	
3 New Power Transformer Including Pad If Required		X	
4 Emergency Power Generators w/ External Switch & Pad If Required		X	
5 Manifold Electrical Sub-Panels To Single Point	X		
6 Main Disconnect or Main Panel At Building Exterior (Sized Per Design Requirements)	X		
7 Meter If Required		X	
8 Ground Rod for Main Panel or Main Disconnect		X	
9 Final Connection of Power To Single Point at Building Line		X	
<b>F: Data/Communication Site Work</b>			
1 Connection of Building To Main Data/Communication Site Source		X	
2 Run Underground Data/Comm From Source To Building Line		X	
3 Site Install of Data/Comm (Interior Wiring of Tele/Data Cable, See Section Q)	X		
4 Test of Data/Comm System Including Test Report	X		
5 Final Connection of Data/Comm System		X	
6 Connection Of Building To Main Security/CCTV Site Source			X
7 Run Underground Security/CCTV From Source To Building Line			X
8 Site Installation of Security/CCTV (Icon Standard System, Wiring/Blocks)			X
9 Final Connection & Test of Security/CCTV System			X

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 Project Location: Enid, OK  
 Date: 11/2/2016

Responsibility: ☒ X  
 Optional Item: ☐ O

	Icon	Client	NIC
<b>G: Fire Suppression Plumbing Site Work</b>			
1 Tap Existing Fire Water Source At Site		X	
2 Run Underground Fire Water From Source To Building Line, Includes PIV & Tamper Conduit		X	
3 Fire Water Tank/Pump			X
4 Field Installation/Completion of Fire Sprinkler System to Single Point Within Crawl Space	X		
5 Final Connection of Fire Water Within Crawl Space of Building	X		
6 Field Certification & Test Of Fire Sprinkler System	X		
<b>H: Fire Alarm Site Work</b>			
1 Field Installation/Completion of Building Fire Alarm System ( <b>Gamewell E3</b> )	X		
2 Run Underground To Fire Alarm Source			X
3 Fire Alarm Transmitter ( <b>Monaco BTX-T</b> )	X		
4 Final Connection & Test of Fire Alarm System	X		
5 Design & Installation of Mass Notification System ( <b>Gamewell E3</b> )	X		
6 Design & Installation of Nurse Call & Public Address Systems ( <b>Icon Standard, Pull Strings @ Restrooms Only For Nurse Call</b> )	X		
7 Design & Layout of Public Address System ( <b>included</b> )	X		
8 Design & Installation of Duress Systems			X
<b>I: Fire Protection Plant Prep</b>			
1 Fire Alarm Boxes - Empty J-Boxes w/ 3/4" Sch. 40 Elec. PVC Conduit Stubbed Above Ceiling	X		
2 Fire Alarm Power - 20 Amp Dedicated MC Cable Whip Above Ceiling Above Panel Location	X		
3 Installation Of Fire Sprinkler System - Piping Runs & Prep For Site Completion	X		
4 Installation Of Riser w/Backflow Preventer	X		
5 Semi-Recessed Fire Extinguisher Cabinets @ Each Entry	X		
6 Fire Extinguisher - ABC 10#	X		
<b>J: Floor</b>			
1 Frame - Outrigger	X		
2 Running Gear - Remove and Return To Icon	X		
3 Bottom Board - Poly Simplex	X		
4 Wood Joists - 2" x 8" #2 DF @ 16" OC or Per Design Requirements	X		
5 Insulation - R-25 Fiberglass	X		
6 Sub Floor - 3/4" T & G Advantech or Per Design Requirements	X		
7 Floor Covering - 12" x 12" x 1/8" Vinyl Composite Tile "Cottage Tan"	X		
8 Floor Covering - 26oz Commercial Grade Carpet "Willow Wisp"	X		
9 Floor Covering - Sheet Vinyl As Shown On Plans, Site Installed, Icon Standard	X		
10 Cove Base - 4" Vinyl Base "Fawn", 6" Vinyl Base @ Restrooms	X		
11 Security Backing - 9 GA Expanded Steel Under Floor Decking			X
<b>K: Roof</b>			
1 Frame - Laminated Plywood	X		
2 Wood Rafters - 2" x 10" # 2 DF @ 24" OC or Per Design Requirements	X		
3 Roofing - 45 Mil Black EPDM	X		
4 Ceiling - 2' x 2' Dropped Acoustical Ceiling Tile	X		
5 Ceiling - 2' x 2' Dropped Moisture & Heat Resistant Ceiling Tile @ Shower Areas	X		
6 Ceiling Height - 7'-10"	X		
7 Insulation - R-30 Fiberglass	X		
8 Sheathing - 7/16" OSB or Per Design Requirements	X		
9 Trim - Match Building Siding	X		
10 Roof Warranty - (1) One Year	X		
11 Access Hatch w/ Ladder			X
12 Security Backing - 9 GA Expanded Metal			X

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Project Description: 177' x 60' Modular Building  
 Project Location: Enid, OK  
 Date: 11/2/2016

Responsibility:	X
Optional Item:	O

	Icon	Client	NIC
<b>L: Exterior Walls</b>			
1 Wood Stud Framing - 2" x 4" # 2 DF @ 16" OC or Per Design Requirements	X		
2 Insulation - R-13 Kraft Backed Fiberglass	X		
3 Interior Finish - See "Interior Walls" Section Below	X		
4 Sheathing - 7/16" OSB w/ House Wrap	X		
5 Exterior Finish - 26 GA Prefinished Metal "R" Panel "Light Stone"	X		
6 Security Backing - 9 GA Expanded Metal			X
7 Fire Walls - Fire Rated Gypsum for 1 Hour Assembly			X
<b>M: Interior Walls</b>			
1 Wood Stud Framing - 2" x 4" # 2 DF @ 16" OC or Per Design Requirements	X		
2 Interior Wall Finish - 5/8" Vinyl Covered Gypsum "Ruff Stuff Frost"	X		
3 Interior Wall Finish - White Fiberglass Reinforced Panels Over Gypsum @ Shower Areas	X		
4 Interior Wall Height - 8'-0" Nominal	X		
5 Corner Guards			X
6 Insulation - R-11 Fiberglass For Sound @ Restrooms Only	X		
7 Security Backing - 9 GA Expanded Metal			X
8 X-Ray Shielding - 7' Tall Lead Lining or Extra Layer of Gypsum			X
9 Fire Walls - Fire Rated Gypsum for 1 Hour Assembly			X
<b>N: Exterior Doors</b>			
1 Doors - 18 GA Steel, Paint To Match Exterior & Interior	X		
2 Doors - Aluminum Storefront			X
3 Frames - 16 GA Steel w/ 1 1/2 Pr Ball Bearing Hinges, Full Weather-stripping	X		
4 Glazing			X
5 Hardware - Grade 2 - Lever/Panic	X		
6 Construction Cores - Provided For Any & All Keyed Lockset Function Hardware	X		
7 Permanent Lock Cores - 7-Pin/Best/Other If Req'd. Total Purchase & Labor of Cores & Keys		X	
8 Confirmation of Door Hardware Function & Core/Key Information Prior to Plan Approval		X	
9 Security Locks - Card Readers/Electric Strikes			X
10 Closers - ADA Compliant	X		
11 Kick Plates			X
<b>O: Interior Doors</b>			
1 Doors - Solid Core Prefinished Wood, Honey	X		
2 Frames - Knock Down	X		
3 Glazing			X
4 Hardware - Grade 2 - Lever/Lever, Passage @ Common Areas, Entry/Storage As Applicable	X		
5 Hardware - Push/Pull @ Multi-Use Restrooms, Privacy @ Single-Use Restrooms	X		
6 Construction Cores - Provided For Any & All Keyed Lockset Function Hardware	X		
7 Permanent Lock Cores - 7-Pin/Best/Other If Req'd. Total Purchase & Labor of Cores & Keys		X	
8 Confirmation of Door Hardware Function & Core/Key Information Prior to Plan Approval		X	
9 Security Locks - Card Readers/Electric Strikes			X
10 Closers - ADA Compliant			X
11 Kick Plates			X
12 STC Rated Door Systems			X
<b>P: Glass</b>			
1 Windows - 36x48 Bronze Aluminum Single Hung			X
2 Glazing - Dual/Clear/Low E			X
3 Force Protection Framing & Laminated Glass			X
4 Interior Openings - Half Wall w/ Countertop @ Reception	X		
5 Counter Shutters @ Interior Openings			X

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Project Description: 177' x 60' Modular Building

Project Location: Enid, OK

Date: 11/2/2016

Responsibility:	X
Optional Item:	O

	Icon	Client	NIC
<b>Q: Electrical</b>			
1 Service - 208Y/120V Three Phase	X		
2 Panels/Loadcenters - Clip On Breakers, Sized Per Code, Aluminum Buss	X		
3 Labeling Of Panel Boxes	X		
4 Wiring- # 12 THHN AWG Minimum	X		
5 Conduit - MC Cable	X		
6 Interior Lights - 2' x 4' Recessed Lay-in T-8 Fluorescent (3-Tube)	X		
7 Exterior Lights - Fluorescent at Each Entry w/ Photocell	X		
8 Exit/Emergency Lights w/ Battery Backup As Required By Code	X		
9 Recepts - Duplex, 20 Amp	X		
10 Dedicated Recepts - 20 Amp As Required	X		
11 GFI Recepts - 20 Amp As Required	X		
12 Service Outlets - Exterior Mounted For HVAC Units	X		
13 Switches - 20 Amp	X		
14 Ceiling Circuits - 20 Amp w/ 10' MC Whips As Req'd - Connections/Poles/Etc by Owner	X		
15 Floor Boxes - Duplex w/ Cover Plate			X
16 Data/Comm Boxes - Empty J-Boxes w/ 3/4" Sch. 40 Elec. PVC Conduit Stubbed Above Ceiling	X		
17 Data/Comm Wiring - (X) Cat6 Cables Above Ceiling w/ Hanger Supports To Comm Room Per Office	X		
18 Data/Comm Equipment - Patch Panels/110 Blocks	X		
19 Data/Comm Electronics - Routers/Switches/Etc.		X	
20 Cable Tray Above Ceiling			X
21 CATV Wiring - Coax. Cable/AV Feed Cabling If Required		X	
<b>R: Plumbing</b>			
1 Water Line - PEX	X		
2 Shutoff Valves - Chrome	X		
3 Waste Line - PVC-DWV Sch 40 Drain, Waste & Vent w/ Multiple Drops	X		
4 Gas - Gastite or Equal			X
5 Water Heaters - Electric, Sized Per Design Requirements	X		
6 Lavatories - Wall Mount White Vitreous China	X		
7 Faucet - Center Set Paddle, ADA	X		
8 Toilets - White Vitreous Tank Type w/ Open Front Seat & Elongated Bowl	X		
9 Urinals - Wall Mount w/ Manual Flush Valve			X
10 Mop Sinks - Fiberglass With Legs, Goose Neck Faucet	X		
11 Exterior Faucet - Freeze Resistant	X		
12 Water Cooler - Hi Lo ADA	X		
13 Sinks - Commercial Stainless Steel w/ Swing Spout Faucet @ DTR's Only (4 Total)	O		X
14 Showers - 39" x 39" Handicap Fiberglass Units W/ Seat, Grab Bars, Etc.	X		
15 Valve - Ice Maker/Coffee Maker			X
16 Specialty - Eye Wash/Garbage Disposal/Etc			X
17 Equipment Prep - Water Lines & Drain/Vent Pipes Stubbed at Nearby Wall	X		
18 Equipment Install - Connections, Shut-Off Valves, Extensions to Units		X	
19 Recessed Washer Boxes w/ Drain & Water Supply			X

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Project Description: 177' x 60' Modular Building

Project Location: Enid, OK

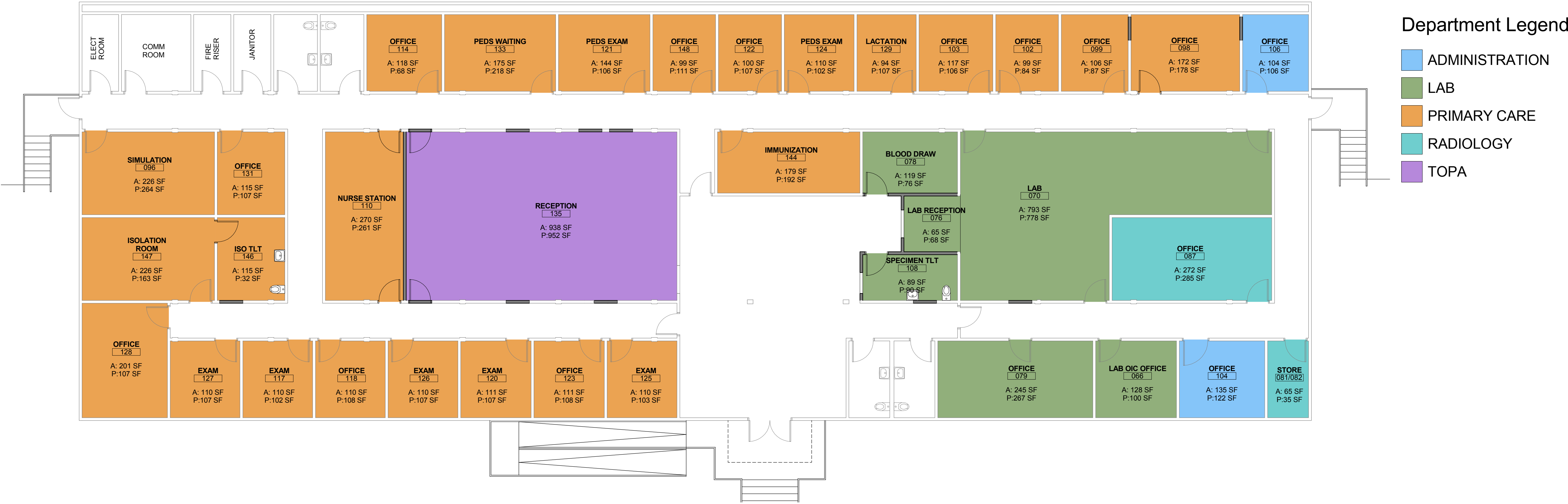
Date: 11/2/2016

Responsibility:	X
Optional Item:	O

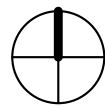
	Icon	Client	NIC
<b>S: HVAC</b>			
1 Units - Wall Mount, Sized Per Design Requirements, 1PH Electric, Code Compliant	X		
2 Exterior Mounted Filters	X		
3 Supply Duct - Galvanized Round Metal w/ Flex	X		
4 Return Duct - Galvanized Round Metal w/ Flex	X		
5 Registers - Adjustable	X		
6 Grilles - White Steel	X		
7 Thermostat - One Per Unit, Manual	X		
8 Ceiling Mounted Exhaust Fans @ Restrooms, Sized Per Code	X		
9 DedicatedMini-Split Unit @ Comm Room	X		
10 Additional Exhaust - Fume Hoods/Make-up Air Units			X
11 Special Requirements - Force Protection Air Intake Height Kit If Required			X
12 Energy Management System & Connection			X
13 Special - Redundant Units/Emergency Shutoff/High Filtration			X
14 Startup & Test At Plant	X		
15 Test & Balance w/ Report	X		
<b>T: Millwork</b>			
1 Cabinets - Light Oak Base & Overhead w/ Countertop @ DTR's (5 LF Per DTR)	O		X
2 Countertops - High Pressure Laminate w/ Integral Back Splash (5 LF Per DTR)	O		X
3 Medicine Cabinets/Specialty - High Load Lab Cabinets and/or Solid Surface Countertop			X
4 Shelves - Adjustable			X
5 Laundry Folding Table			X
<b>U: Accessories</b>			
1 Toilet Paper Dispenser - Single Roll	X		
2 Grab Bars - ADA Stainless Steel	X		
3 Soap Dispenser - Wall Mounted Liquid			X
4 Paper Towel Dispenser - Surface Mount Stainless Steel			X
5 Waste Receptacle - Surface Mount Stainless Steel			X
6 Mirrors - Wall Mounted Frameless @ Each Restroom Lavatory	X		
7 Equipment Prep - Structural Design to Support Weight, Equip. Spec. Verified by Client	X		
8 Equipment & Casework - New/Existing Provided & Installed After Icon SOW Complete		X	
9 Modesty Partitions - Prefinished Steel			X
10 Benches			X
11 Lockers			X
12 Appliances		X	
13 Furniture		X	
14 Signage		X	
15 Phone Board - 1/2" Plywood w/ Fire Retardant Paint	X		

Exhibit "B" - TPF Floor Plans - Preliminary

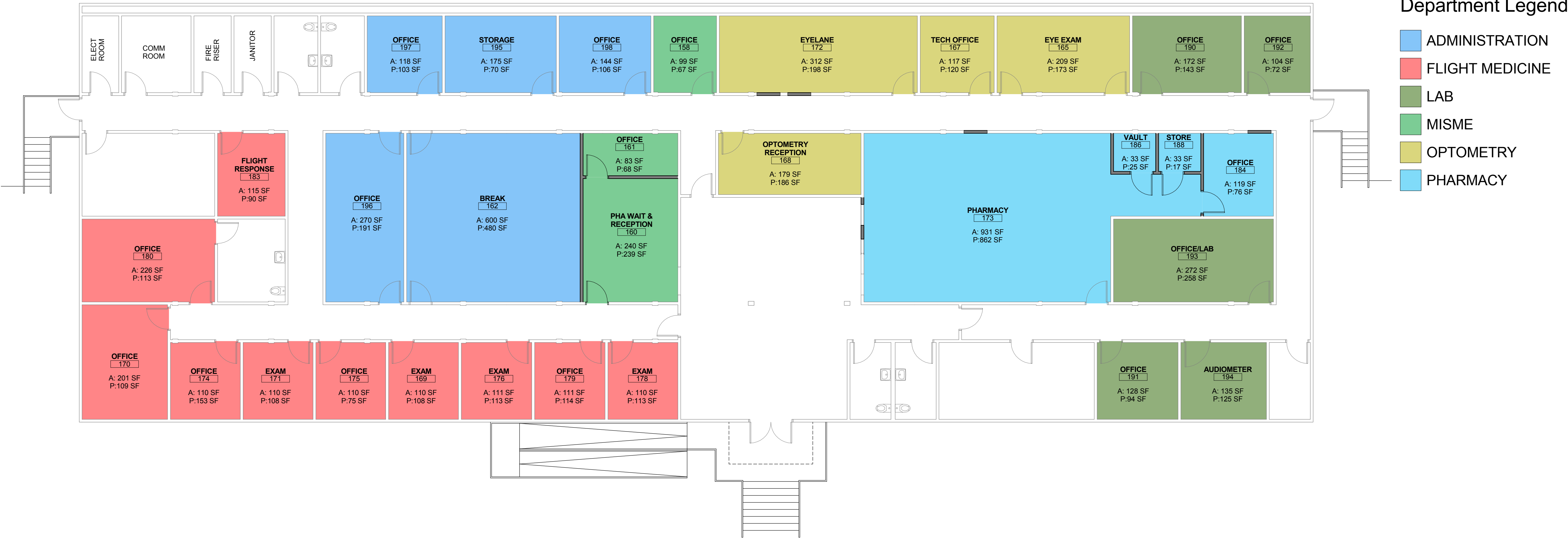




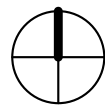
**1 TPF PHASE 2**  
SCALE: 1/8" = 1'-0"







**1** TPF PHASE 3  
SCALE: 1/8" = 1'-0"





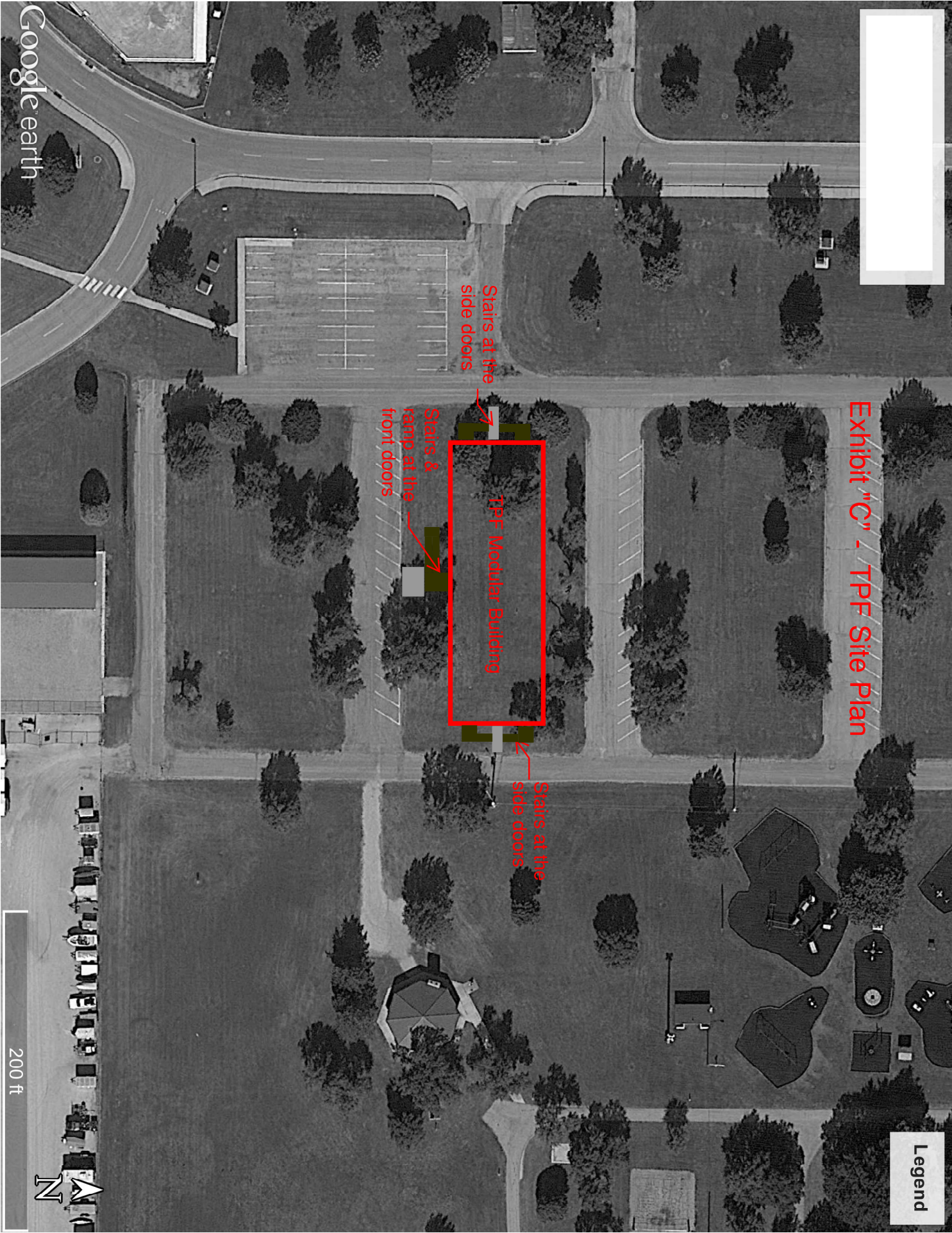


Exhibit "C" - TPF Site Plan

TPF Modular Building

Stairs at the side doors

Stairs & ramp at the front doors

Stairs at the side doors

Legend

200 ft

Exhibit "D" - Phase 1 TPF Finish Floor Plan



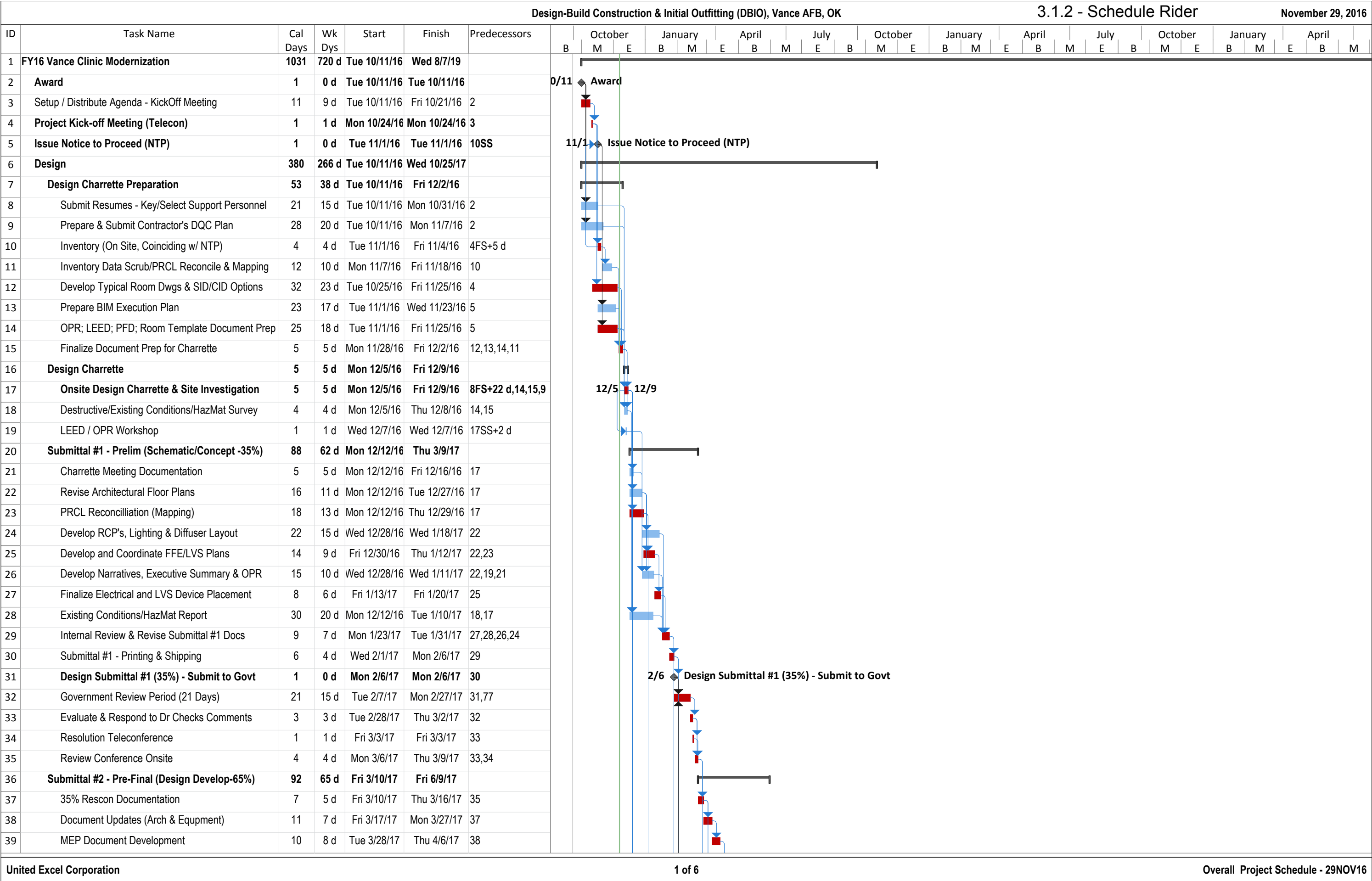
### **3.1.1. Drawings and Specifications Rider**

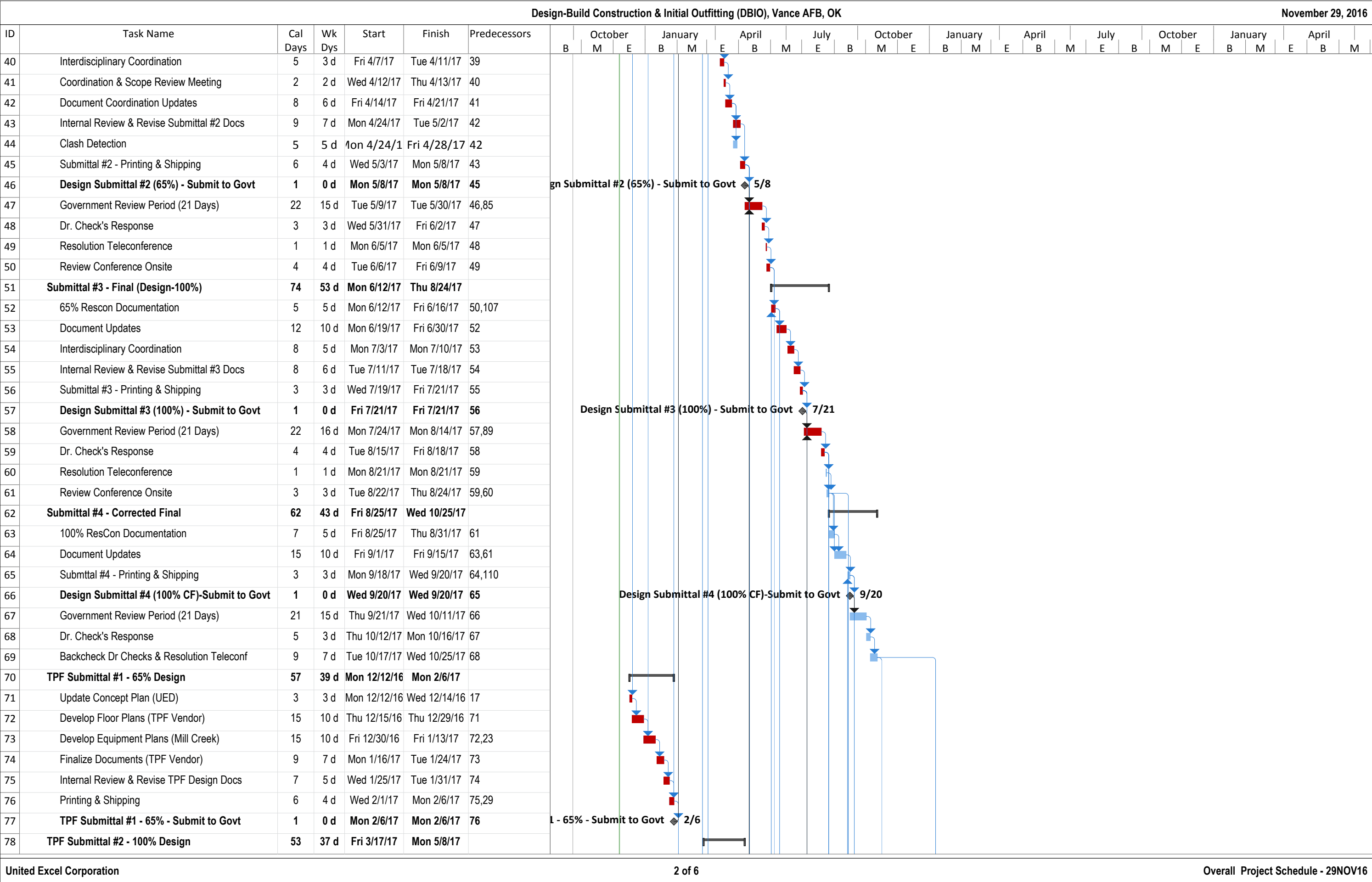
Contract No. W9127S-13-D-6002  
Task Order No. 0006  
United Excel Job Number: UE.16.0026

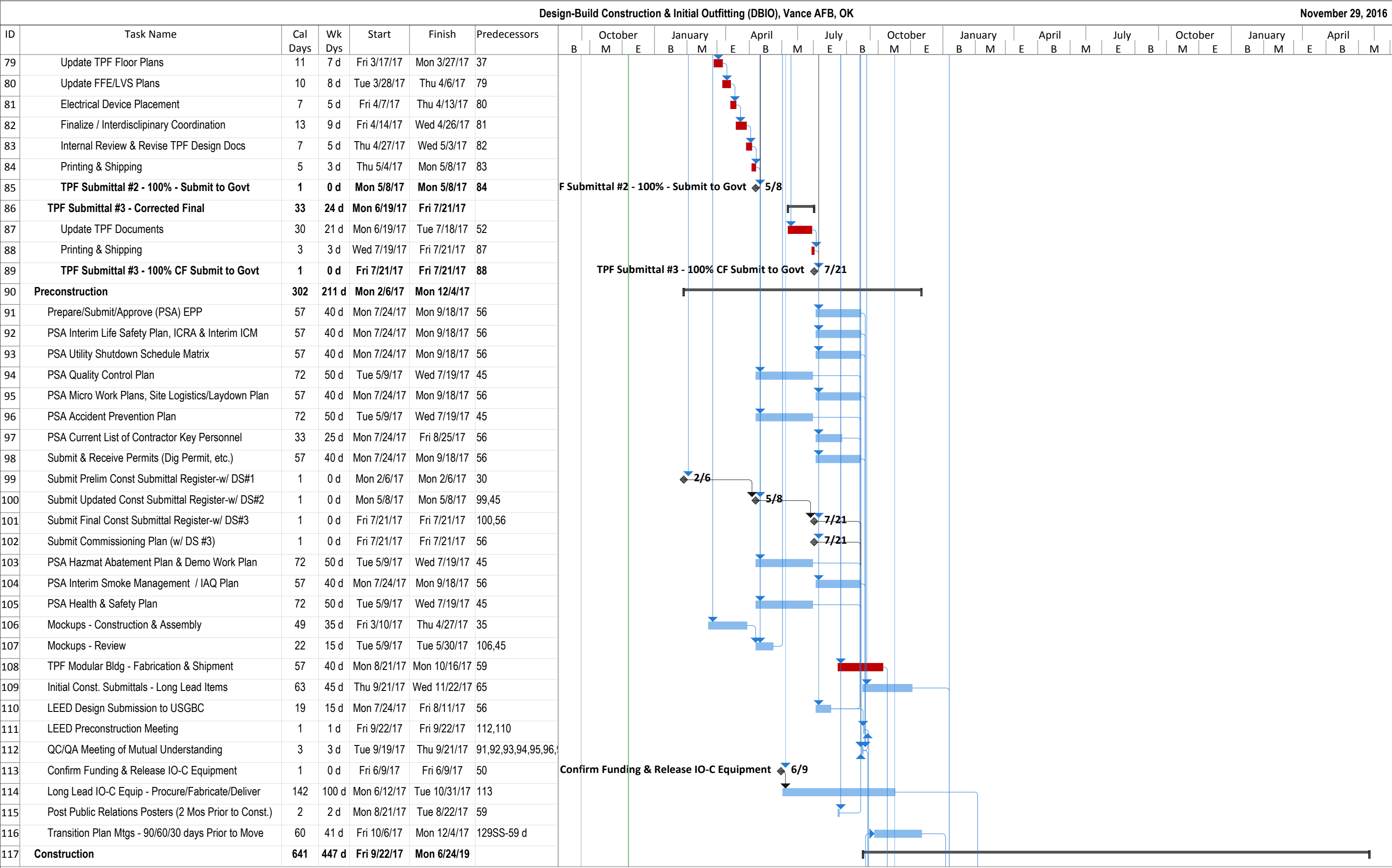
**Contract Documents are as follows:**

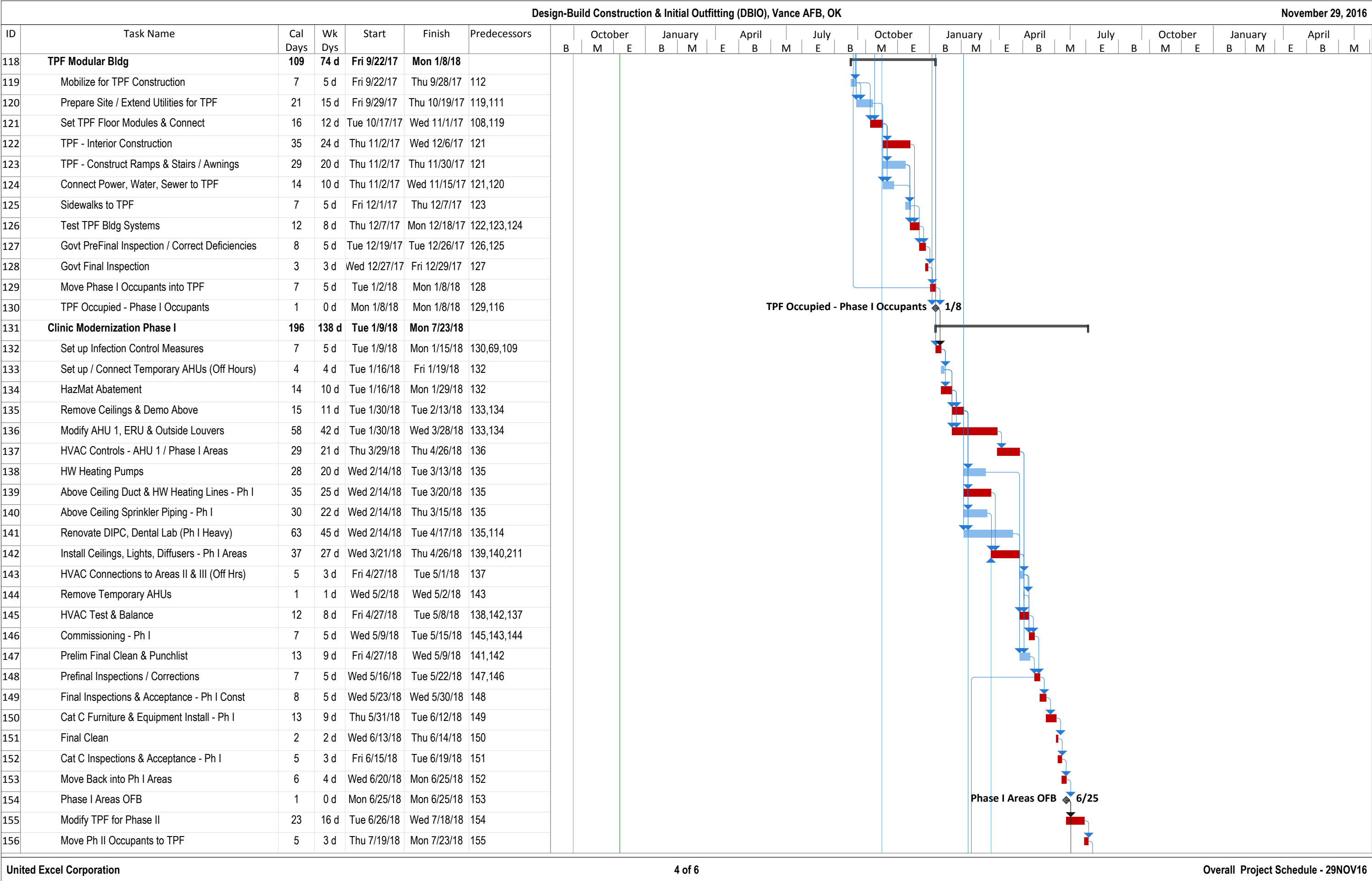
1. Solicitation (also known as the 'RFP') for the renovation of Vance AFB Medical Clinic, USACE Solicitation No. W9127S-16-R-6019, dated July 15, 2016, which includes:
  - a. Contract Requirements and Wage Determination Schedule
  - b. Attachment 0 – Solicitation Scope of Work
  - c. Attachment 1 – Bid Schedule / Pricing Schedule
  - d. Attachments A through I, containing Project Description, Project Requirements, Existing conditions, Program for Design, applicable Design Standards, and outline specifications
2. Amendments to the Solicitation as follows:
  - a. Amendment 1, dated August 3, 2016
  - b. Amendment 2, dated August 16, 2016
  - c. Amendment 3, dated August 17, 2016
  - d. Amendment 4, dated August 18, 2016
3. Contractor's Task Order Contract with the USACE #W9127S-13-D-6002-0006, dated September 30, 2016.





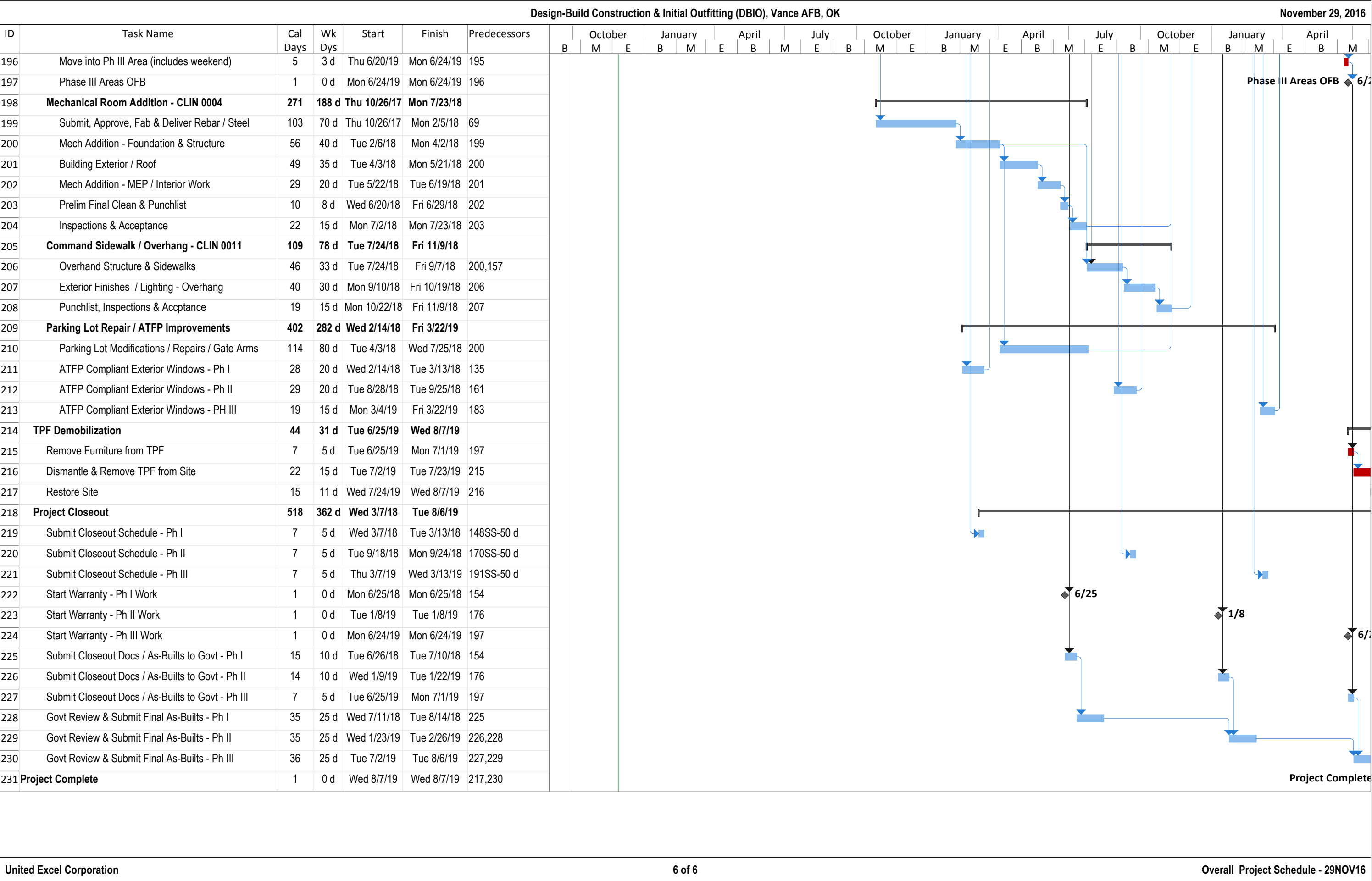












### 3.1.3 Job Procedures Rider

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### 1) Payment Procedures/Joint Check Procedures

- a) Subcontractor has submitted a schedule of values on the enclosed form 703a with its first application for payment.
- b) **Only Contractor's authorized forms will be accepted for payment applications:**
  - i) **702-Pay Application** -- Progress payment shall be summarized on the enclosed document 702.
  - ii) **703a-Original Contract Work** -- This breakdown includes only the original contract amounts. The amounts include the values of any owner purchased materials. The totals at the bottom of this form shall be transferred to the bottom of 703b-Change Orders form.
  - iii) **703b-Change Orders** -- This breakdown includes only the approved change orders which have been issued on the Project. The grand totals at the bottom on this form shall be transferred to lines 1, 2, 3 and 4 of form 702-Pay Application.
- c) **Each monthly billing shall be delivered to Contractor by the 20th day of the month.** Contractor will not be responsible for requests rendered after the time specified. Requests for payment received after the time specified will be held for the following month's pay request. **Request for payments may be sent via email to [accounting@i-dbo.com](mailto:accounting@i-dbo.com).**
- d) Subcontractor to provide separate pay application(s) for amounts to be paid via joint check. Such pay applications are to be clearly identified as requiring a joint check and joint check payees.
- e) If required, each monthly billing shall be supported by evidence satisfactory to Contractor of Subcontractor's payment of the labor, labor taxes, union dues, services and materials listed therein.
- f) Payment for stored material will be made, if allowed by the Contract Documents, as approved by the Owner and Architect, provided the proper information is submitted with the progress payment. If materials are stored on the job site, verification will be made by Contractor's Superintendent. If materials are stored off-site, Subcontractor must submit verification that the material has been delivered to its insured warehouse. This verification should include the following information:
  - i) Location of warehouse or storage yard.
  - ii) Information indicating material was delivered to the above address, i.e., shipping tickets, packing slips, material invoices, photographs.
  - iii) Certificate of Insurance (if material is stored in a location not covered by insurance policy previously submitted).
- g) It is Subcontractor's responsibility to protect materials from damage, theft, or vandalism during storage. Subcontractor shall remain responsible for insuring and safeguarding stored materials until actually installed and accepted by Owner. Stored material pay requests must be indicated on the 703 form in the proper location.
- h) Subcontractor will submit a completed Form W-9 with its first application for payment that clearly identifies the requester and provides all necessary information to determine their eligibility for receiving a 1099. The W-9 form can be found at the IRS website. <http://www.irs.gov/formspubs/index.html?portlet=103>

**2) Procedures for Submittals**

- a) All shop drawings, catalog cuts, samples and descriptive data shall be submitted to Contractor. ***Include the name of the project, name of supplier or subcontractor, description of product and applicable section of the specifications.*** All submittals shall be made in a timely manner to secure necessary approvals and lead time to adhere to project schedule. Fourteen (14) days must be allowed for return of shop drawings. All submittals must be received by the Contractor within seven (7) days of receipt of this Subcontract.
- b) Submittals shall be provided as follows, or in accordance with the specifications:
  - i) Shop drawings shall be submitted with one (1) sepia and four (4) prints. If the shop drawings are to be reviewed by the electrical, mechanical or structural consulting engineer one (1) sepia and five (5) prints will be required. One (1) print will be returned.
  - ii) Samples, product data, catalog cuts shall be submitted with no more than six (6) copies. If the submittal is to be reviewed by the electrical, mechanical or structural engineer, seven (7) copies will be required.
- c) The responsibility for timely delivery of materials to the jobsite is the responsibility of the material supplier or installing subcontractor. This includes allowances for normal Architect / Engineer review periods as stated above. It is the responsibility of the material supplier, material supplier representative or installing subcontractor to provide the following minimum services Tracking, expediting, coordination, resubmission is the responsibility of the installing subcontractor.
- d) Review the Contractor's project construction schedule, and understand the required delivery date for the materials which you are responsible.
- e) Review the Contractor's project construction schedule, with the factory or production entity which is producing the materials.
- f) Develop a schedule for delivery of materials which accounts for normal review periods including the time necessary for delivery or mailing of submittals.
- g) Track, expedite, and coordinate all shop drawing through Contractor.
- h) Notify Contractor immediately in writing that the submittal information currently being reviewed by the Contractor / Owner / Architect / Engineer must be released immediately to avoid delays in delivery.

**3) Jobsite Procedures**

- a) Daily reporting
  - i) Subcontractor's Superintendent shall check in with Contractor's on-site representative daily upon arrival at the job site, and provide his home phone number to Contractor.
- b) Jobsite meetings
  - i) At the discretion of Contractor's Superintendent, foremen's meetings will be held weekly. Updated construction schedules may be distributed during these meetings.
- c) Temporary Power
  - i) Temporary power for small tools and temporary light will be supplied, at locations designated by the electrical subcontractor, at no cost during normal working hours. Any special electrical requirements above and beyond that provided by the electrical subcontractor are not included and must be coordinated with electrical subcontractor and paid for directly by Subcontractor requiring same. Electrical consumption cost for electric welders will be charged to Subcontractor at a rate to be determined by Contractor.
- d) Removal of Debris
  - i) Subcontractor shall keep the premises free at all times from the accumulation of waste materials or rubbish resulting from the execution of the Work, and, at completion thereof, shall clean the Work in a manner satisfactory to Contractor. Subcontractor shall also clean and remove from work performed by others at the job site all debris and other matter resulting from Subcontractor's execution of its work.

- ii) Subcontractor shall make arrangements to remove all cartons, crates and boxes at the end of each work day. Trash shall be removed from each floor of the building on a daily basis. Trash shall be placed in the Contractor's container. Subcontractor's Job Superintendent or Foreman must enforce this requirement.
- iii) If Subcontractor shall after notice fail to comply with the provisions of this Section, Contractor shall have the right itself, or through others, to perform such cleaning and to deduct the cost thereof from any payments due or to become due to Subcontractor, or to be reimbursed for same by Subcontractor.
- e) Jobsite Parking
  - i) Subcontractor's employees shall park in areas designated by Contractor. All improperly parked cars will be towed away at the Owner's expense.
- f) Jobsite Deliveries
  - i) If any materials or equipment are included in this Subcontract, they shall be delivered F.O.B. Job Site unless otherwise provided in the Contract Documents or expressly stated in writing by Contractor. Deliveries shall be coordinated with Contractor's representative, and not be made without 24-hour notice and written approval. Failure to ship material in accordance with the Project Schedule shall constitute a breach of this Contract agreement.
- g) Layout and Measurement
  - i) Contractor will layout building corners, and provide a reference elevation on each floor for the use of all subcontractors. All subcontractors are responsible for all layout and measurements required to complete their work in accordance with the contract terms.
- h) Removal of Personnel
  - i) Subcontractor shall cooperate with Contractor's superintendent in charge, and remove from the job any personnel as deemed by Contractor to be in the best interest of the Project.
- i) Updating of Drawings
  - i) Subcontractor shall obtain a set of record drawings from Contractor at commencement of the Project and keep it updated by markings in red pencil on a daily basis.
- j) Personal Identity Verification for projects on Federally-controlled facilities
  - i) In accordance with FAR 52.204-9, the Subcontractor shall comply with U.S. Government agency personal identity verification procedures identified in the contract between the Contractor and the Owner that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.
  - ii) The Subcontractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

### **3.1.4 Equipment Rider**

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### **LENT OR LEASED TOOLS A**

In the event Contractor lends or furnishes tools or equipment to Subcontractor in connection with the performance of the Work, Subcontractor agrees as follows:

- A. To make its own determination before commencing the Work that such tools or equipment are adequate for the safe performance of the Work or the use to be made thereof;
- B. That such tools or equipment will be loaned or furnished to and accepted by Subcontractor without warranty or representation by Contractor as to their condition or as to their adequacy to perform the functions for which they are used by Subcontractor;
- C. That any personnel required to operate the tools or equipment shall be employees of Subcontractor during such use and that said personnel shall be included on Subcontractors payroll;
- D. To return such tools or equipment to Contractor at the conclusion of such use in as good condition as when received, ordinary wear and tear excepted; and
- E. To indemnify and hold Contractor harmless from all claims, demands, causes of action, damages or injuries resulting from or arising out of Subcontractors possession or use of tools or equipment.

Subcontractor shall, nevertheless, bear responsibility for scheduling the Work to utilize such tools or equipment when available, or to provide such additional tools or equipment at its own cost as necessary to not delay the progress of the Work. Nothing in this section shall be construed to obligate Contractor in any way to furnish any tools or equipment. For the purpose of this Rider E, tools and equipment shall be defined to include hoists, scaffolds, and all other types of apparatus, facilities or service which Contractor may lend or furnish to Subcontractor. In addition, all of the provisions of this Rider E shall be applicable to any lighting or illumination lent or furnished to Subcontractor by Contractor.

### 3.1.5 Insurance and Bonds Requirement Rider

Contract Date:4 December 2016

#### I. INSURANCE

FAR 52.228-5 - INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

In accordance with Federal Acquisition Regulation (FAR) Clause 52.228-5

- (a) The Subcontractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the Contract Documents.
- (b) Before commencing work under this contract, the Subcontractor shall notify the Contracting Officer, via the Contractor, in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—
  - (1) For such period as the laws of the State in which this contract is to be performed prescribe; or
  - (2) Until 30 days after the insurer or the Subcontractor gives written notice to the Contracting Officer, via the Contractor, whichever period is longer.
- (c) The Subcontractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the Contract Documents. The Subcontractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer, via the Contractor, upon request.

#### A. TYPE OF COVERAGE AND LIMIT OF LIABILITY

The SUBCONTRACTOR shall purchase and maintain insurance of the following types of coverage with limits of liability equal to the greater of the limits stated below or in the contract documents between OWNER and CONTRACTOR.

- 1. Commercial General Liability Insurance, on an occurrence basis and form for hazards of:
  - (a) construction operations;
  - (b) subcontractors and independent contractors;
  - (c) products and completed operations (with completed operations to remain in force for two (2) years following PROJECT completion;
  - (d) explosion, collapse and underground; and
  - (e) contractual liability insuring the indemnities set forth in this Subcontract.

Insurance shall not contain exclusions or endorsements that limit insurance protection for work performed under this Subcontract.

Minimum Limits: \$1,000,000 per occurrence  
\$1,000,000 personal/advertising injury  
\$2,000,000 general aggregate  
\$2,000,000 products completed operations

2. Comprehensive Automobile Liability Insurance, including coverage for all owned, non-owned and hired automobiles used in conjunction with services or other work hereunder.

Minimum Bodily Injury and Property  
Damage Combined Single Limit: \$1,000,000 per occurrence

3. Workers' Compensation and Employers' Liability Insurance, to cover the statutory limits of the workers' compensation laws of the state or states in which any work is to be performed and, when applicable, Federal laws, Voluntary Compensation and Employers' Liability (including occupational disease) coverage.

Minimum Limits: \$500,000 each accident  
\$500,000 policy limit for disease  
\$500,000 each employee for disease

4. Design Insurance, if any design responsibility is included in this Subcontract, SUBCONTRACTOR shall purchase and maintain for a period of three (3) years, after completion, insurance covering claims arising out of performance of or the furnishing of design and professional services and for claims arising out of alleged errors and omissions or negligent acts in connection with the Subcontract, including prior acts coverage and coverage for all professional liability caused by any designer or consultant directly or indirectly employed or retained by SUBCONTRACTOR with a minimum limit approved by CONTRACTOR.

5. Excess Liability Coverage, or an umbrella form. Excess Liability or Umbrella Coverage may be used in conjunction with primary limits to meet contract requirements.

Minimum Limits: \$1,000,000 per occurrence  
\$1,000,000 aggregate

6. Any aggregate under the SUBCONTRACTOR's Commercial General liability insurance in A(1)(a) above shall, by endorsement, apply to this PROJECT separately.

#### **B. COVERAGE BASIS**

All coverages are on an occurrence basis (except for Design Insurance in I(A)(4) above which may be on a claims made basis) and shall be maintained without interruption from date of commencement of the SUBCONTRACTOR's WORK until date of final payment or date coverage is required to be maintained after final payment to the SUBCONTRACTOR, whichever is later, but not limited to, the products and completed operations coverage stated above in I(A)(1)(c).

**C. CERTIFICATE OF INSURANCE**

Certificates of Insurance acceptable to the CONTRACTOR shall be filed with the CONTRACTOR prior to commencement of the SUBCONTRACTOR's WORK. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment.

**D, PROPERTY INSURANCE**

If Property Insurance is not in effect for the PROJECT, then SUBCONTRACTOR shall provide Property Insurance for the full value of the SUBCONTRACT WORK, including Property Insurance coverage for all materials stored off site or in transit. SUBCONTRACTOR shall be reimbursed for this insurance through the payment application process.

**E. WAIVERS OF SUBROGATION**

The CONTRACTOR and SUBCONTRACTOR waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the OWNER, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the WORK, except such rights as they may have to proceeds of such insurance held by the OWNER as fiduciary. The SUBCONTRACTOR shall require of the SUBCONTRACTOR's sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even through that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Additionally, SUBCONTRACTOR and sub-subcontractors shall include waiver of subrogation clauses, where allowed by law, under the general liability, auto liability and umbrella liability in favor of CONTRACTOR and OWNER.

**F. ADDITIONAL INSURED**

Any insurance policy obtained by the SUBCONTRACTOR to fulfill the insurance requirements of the Subcontract (except Workers' Compensation Insurance and Design Insurance), shall include the OWNER and CONTRACTOR as an additional insured including completed operations. Such insurance shall be deemed primary insurance to any similar insurance the CONTRACTOR may obtain for its own benefit, which shall be excess or secondary but not contributing insurance. Each such policy obtained by the SUBCONTRACTOR shall provide that the insurer shall defend any suit against the CONTRACTOR, its officers, agents, or employees, even if such suit is frivolous or fraudulent.

Severability of Interest. All insurance carried shall be endorsed to provide that inasmuch as their policy is written to cover more than one insured, all terms, conditions, insuring agreements, endorsements, with the exception of the limit of liability, shall operate in the same manner as if there was a separate policy covering each insured.

**G. NO DISCHARGE OF LIABILITY OF INSURANCE**



The issuance or maintaining of insurance of any type of the SUBCONTRACTOR or the CONTRACTOR will not be deemed or construed to release, limit, waive, or discharge the SUBCONTRACTOR from any and all of the obligations and risks imposed by the Subcontract upon the SUBCONTRACTOR. Neither shall any forbearance nor omission by the CONTRACTOR to require proof of insurance from the SUBCONTRACTOR before permitting the SUBCONTRACTOR to proceed or continue with the WORK be deemed a waiver of the CONTRACTOR's rights or the SUBCONTRACTOR's obligations regarding the provision of insurance under this Subcontract.

#### H. SUB-SUBCONTRACTORS

SUBCONTRACTOR shall require all sub-subcontractors providing labor, material, equipment and supplies directly to SUBCONTRACTOR under this Subcontract to obtain and maintain, without interruption, insurance coverages in accordance with the requirements of this Subcontract.

SUBCONTRACTOR shall obtain certificates of insurance evidencing such coverage and provide CONTRACTOR with such certificates.

SUBCONTRACTOR shall be excused from this requirement only by a written waiver from CONTRACTOR.

#### I. INSURANCE CARRIER

All coverages shall be placed in an insurance carrier with a minimum AM Best Rating of (A-)VII.

#### II. BONDS

Performance Bond required: ☒ Yes ☐ No

Labor and Material Payment Bond required ☒ Yes ☐ No

Bond Penalty: \$ 807,766.00 amount each bond

Surety must be acceptable to CONTRACTOR.

### 3.1.6 Subcontracting Plan Rider

**ICON Construction, Inc**

Contract No. W9127S-13-D-6002 / Task Order 0006

Contract Date: 4 December 2016

## SUBCONTRACTING PLAN

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### PROGRAM DESCRIPTION

The United Excel Small Business Participation Plan consists of the twelve (12) plan components as identified in FAR 52.219-9, supplemented by DFARS 252.219-7003, including, but not limited to, outreach, certification processes, management and technical assistance, monitoring and documentation and reporting.

Attached we have included our proposed Small Business Subcontracting Plan that will be utilized in order to achieve the stated small business goals on Vance AFB Clinic Modernization and HVAC Repairs, Enid, OK.

This task order will be delivered using the Design/Build method. Therefore, the solicitation, procurement and subcontracting for many elements of the project will not take place until after design is complete or several months after the award. United Excel will provide updated information in the form of a resubmitted plan at that time.

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### PRINCIPAL SUPPLIES & SERVICES TO BE SUBCONTRACTED

United Excel will seek to utilize small business concerns in various capacities, including, but not limited to, the following:

Supplies, equipment, and furnishings – construction materials, office supplies, equipment, furniture and fixtures, reproduction services, temporary labor and personnel

Direct Services – Construction services in the areas of demolition, building construction, debris hauling, concrete and electrical.

Indirect Services – outsourcing services such as accounting, architecture and engineering consultants, travel assistance, manpower services and fuel.

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### METHOD OF DEVELOPING SUBCONTRACTING GOALS

United Excel will thoroughly review each division of work and appropriately match, when possible, qualified small business subcontractors who's SIC codes supplement and/or complement prime contractor specialties and fulfill the needs of the task order. Solicitations for any new work will be thoroughly reviewed to match their scope to any of the participants' SBCs selected per the method described in Item E herein and SBC subcontractor bids for portions thereof will be solicited when applicable.

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### METHOD OF IDENTIFYING POTENTIAL SOURCES

United Excel will utilize the services of an experienced subcontractor to identify source lists, contact candidates to determine their interest to participate in task orders under this contract, enroll participants, maintain a database of qualified participants according to federal small business contracting categories and maintain communication with enrolled firms in order to sustain their interest.

United Excel will utilize the following sources to identify qualified small business subcontractors:

1. Existing company source lists – United Excel will review every existing vendor and subcontractor as well as every potential vendor and subcontractor to determine their current certification status with the federal government. We will also review the lists of all small and/or minority-owned firms that have done business

with United Excel in the past, in order to determine their eligibility for and interest in the task orders under this contract.

2. CCR – United Excel is registered with the federal government to do small business searches through CCR. We have found a few of our existing vendors on the SBA's database of certified firms.
3. Department of Veterans Affairs – maintains its own list of veteran-owned small businesses. We will utilize their local and national offices as resources.
4. National Minority Purchasing Council – membership organization that matches small businesses with opportunities available through federal government agencies and with corporations.
5. Department of Commerce, Minority Business Development Agency – Serves as a clearinghouse of contracting opportunities for small businesses interested in federal government contracting. Conducts training seminars and workshops on various aspects of small business ownership and management as well as small business networking functions.
6. Local and State organizations - In addition to the sources identified above, other informal solicitation sources include contacts made during events such as small business networking receptions, chambers of commerce meetings, conferences and related functions. For example, United Excel's Small Business Consultant will attend seminars and workshops geared towards small business development in the State where the work takes place. In order to get candidates, we will start with known contact persons from the above named organizations. Such contact persons will be able to identify companies that are already certified, as well as companies that have experience in the primary scopes of work identified in the plan overview.

After contacting potential candidates through meetings, phone, or e-mail contact, we will send them a letter and require them to complete our prequalification form. Based on the data entered on the prequalification form, we will be able to determine the candidate's interest in participating on this contract.

United Excel will attempt to maintain a database of at least three (3) certified companies per category, i.e., small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business, Hubzone small business concerns, small disadvantaged business concerns and women-owned small business concerns.

United Excel will attempt to maintain enrolled participants interest by earnestly seeking to match certified firms with available opportunities as they arise. Our desire is to have a readily available list of potential subcontractors. In addition, United Excel will contact each firm by email and/or letter at least every sixty (60) days in order to keep our list of available enrolled participants up to date.

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## INDIRECT COSTS

In general, United Excel's small business participation plan intends to include both direct and indirect costs in calculating total subcontract dollars to be counted toward achievement of small business goals.

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## ADMINISTRATOR OF SUBCONTRACTING PLAN

Principal Kevin Rogers will be the administrator of the United Excel subcontracting plan.

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## DESCRIPTION OF EQUITABLE OPPORTUNITY EFFORTS

United Excel will utilize various methodologies in order to promote participation of SBCs, including:

1. Contract goals - This is probably the most common method of soliciting and ensuring small business participation. Prime contractors are given an opportunity to bid on work that has pre-assigned small business goals. Construction Managers utilize primes' responses regarding small business participation as a determining selection factor. The firm's response regarding small business participation sometimes carries as much weight as that firm's overall experience and technical qualifications. In most cases, the responsive bid is submitted by a firm that meets the minimum technical qualifications and has the lowest price.

2. Sole source subcontracts – Owner or Construction Manager reserves the right to identify only one firm and decide to contract with the firm alone.
3. Set-asides for small business concerns – Under this methodology, the Owner or Construction Manager practically guarantees that all or a portion of a project is awarded to small business concerns. For example, the contracting agent may set aside a general contracting opportunity for competition among certified small business concerns only. On the other hand, based on the availability of qualified and certified small business concerns in trade areas, the contracting agent may chose to utilize trade set asides.
4. Negotiation of subcontracts – The Owner and/or Construction Manager reserves the right to negotiate subcontracts based on various selection criteria, not price alone.

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## “UTILIZATION OF SMALL BUSINESS CONCERNS”

United Excel is committed to the federal government's objective of utilizing small business concerns.

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## UNITED EXCEL COOPERATION, COMPLIANCE REPORTS & CONTRACTS

United Excel will perform compliance reviews regularly during all phases of this contract. Contract compliance will begin at the point subcontracts are awarded and will continue through the project's completion. Our compliance will assure, as much as possible, that all federal small business requirements are being met.

United Excel will cooperate in any studies or surveys regarding small business contracting. We will also submit periodic compliance reports, including **Standard Form 294, “Subcontracting Report for Individual Contracts,”** and/or **Standard Form 295, “Summary Subcontract Report”**.

Some of the work tasks utilized to ensure small business participation include, but are not limited to, the following:

1. Review responses to bid requests and maintain records of such responses, particularly as it relates to small business statistics.

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## DESCRIPTION OF RECORDS

United Excel will maintain records regarding small business participation with an emphasis on four (4) areas of small business contract compliance, which are:

1. Outreach to potential small business subcontractors
2. Management and technical assistance provided to small business concerns that have contracted with United Excel (all tiers)
3. Prompt payment to small business concerns
4. Conflict resolution between small business concerns and their respective prime contractor.

**Small Business Concern, Small Disadvantaged Business Concerns,  
Women-Owned Small Business Concerns,  
Historically Black Colleges and Universities/Minority  
Institutions, HUBZone Small Business Concerns, and Service  
Disabled Veteran Owned Small Business Concerns  
Subcontracting Plan**

DATE: 30 SEPT 2016

CONTRACTOR: United Excel Corporation

ADDRESS: 5425 Antioch Drive, Merriam, Kansas 66202

CONTRACT No: W9127S-13-D-6002 / Task Order 0006

DESCRIPTION: Vance AFB Clinic Modernization and HVAC Repairs, Enid, Oklahoma

Our firm has established a policy to afford Small Business concerns (SB), Small Disadvantaged Business concerns (SDB), Women-Owned Small Business concerns (WOSB), Veteran-Owned Small Business concerns (VOSB),

(05DEC12 Version)

Insight 00325

Service Disabled Veteran-Owned Small Business concerns (SDVOSB), Historically Black Colleges and Universities/Minority Institutions (HBCU/MI) and HUBZone Small Business (HSB) concerns opportunities to participate in all contracts with the Department of Defense or other entities, both public and private. In most instances, HBCU/MI are not applicable to construction contracts, but will be included throughout this plan with the intent to involve them whenever possible. The following, together with any attachments, is hereby submitted as a Small Business Subcontracting Plan to satisfy the applicable requirements of Public Law 95-507, Public Law 99-661, Section 1207 and Public Law 100-180, Section 806.

1. (a) BASE BID ONLY: The following percentage goals (expressed in terms of a percentage of total planned subcontracting dollars) and dollar amounts are applicable to the contract cited above or to the contract awarded under the solicitation cited. Total Base Bid is \$\_\_\_\_\_
2. The total estimated dollar value of all planned subcontracting (to all types of business concerns) under this contract for the Base Bid and all Options is \$\_\_\_\_\_
  - (a) BASE BID ONLY: The following percentage goals (expressed in terms of a percentage of total planned subcontracting dollars) and dollar amounts are applicable to the contract cited above or to the contract awarded under the solicitation cited.
    - (i) Small Business concerns (SB): 70% of total planned subcontracting dollars under this contract will be awarded to subcontractors who are SB.
    - (ii) Small Disadvantaged Business concerns (SDB): 6.2% of total planned subcontracting dollars under this contract will be awarded to subcontractors who are small concerns owned and controlled by socially and economically disadvantaged individuals and appear on the Central Contractor Registration/Small Business Administration's Dynamic Small Business Search. ([http://dsbs.sba.gov/dsbs/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm)) This percentage is included in the percentage shown under 1.(a)(i) above, as a subset.
    - (iii) Women-Owned Small Business concerns (WOSB): 7% of total planned subcontracting dollars under this contract will be awarded to subcontractors who are WOSB. This percentage is included in the percentage shown under 1.(a)(i) above, as a subset.
    - (iv) Historically Black Colleges and Universities/Minority Institutions (HBCU/MI): 0% of total planned subcontracting dollars under this contract will go to HBCU's who are an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. The term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986 or MI's who are an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)), which includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20 U.S.C. 1059c(b)(1)). This percentage is included in the percentage shown under 1.(a)(i) above, as a subset.
    - (v) HUBZone Small Business concerns: 9.8% of total planned subcontracting dollars under this contract will go to subcontractors who are small business concerns located in a historically underutilized business zone which is an area located within one or more qualified census tracts, qualified non-metropolitan counties or lands within the external boundaries of an Indian reservation and appear on the Central Contractor Registration/Small Business Administration's Dynamic Small Business Search. ([http://dsbs.sba.gov/dsbs/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/dsp_dsbs.cfm)) This percentage is included in the percentage shown under 1.(a)(i) above, as a subset.
    - (vi) Veteran-owned Small Business concerns (VOSB): 3.0% of total planned subcontracting dollars under this contract will be awarded to subcontractors who are SDVOSB. This percentage is included in the percentage shown under 1.(a)(i) above, as a subset
    - (vii) Service-disabled Veteran-owned Small Business concerns (SDVOSB): 0.9% of total planned subcontracting dollars under this contract will be awarded to subcontractors who are SDVOSB. This percentage is included in the percentage shown under 1.(a)(i) above, as a subset.

**Upon completion of the procurement process, a list of small business firms that United Excel will subcontract work to for this task order will be submitted in the format below.** The following principal products and/or services will be subcontracted under the Base Bid of this contract, and the distribution among SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB is as follows:

Subcontractor Name	Product/Service	SB	SDB	WOSB	HBCU/MI	HUBZone	SDVOSB
TBD	Site work						
TBD	Drywall						
TBD	Painting						
TBD	Flooring						
TBD	Mechanical/HVAC						
TBD	Electrical						
TBD	Design Consultant						
TBD	Office Supplies						
TBD	Trash Removal						
TBD	Testing						

- (b) **After of the acceptance of any Options, and after the procurement activity for that Option (should it differ from the base bid), United Excel will submit updated information in the proposed format of this plan.**

**N/A - No Options Included in Bid**

- (c) The following method was used in developing subcontract goals (i.e., statement explaining how the product and service areas to be subcontracted were established, how the areas to be subcontracted to SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB were determined and how SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB capabilities were determined to include identification of source lists utilized in making that determination).

Indirect and overhead costs (check one): ☒ have been \_\_\_have not been included in the goals specified in 1(a) and 1(b).

- (d) Indirect and over head costs have been included in the goals specified in 1(a) and 1(b).
- (e) If "have" is checked, explain the method used in determining the proportionate share of indirect and overhead cost to be allocated as subcontracts to SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB. **Straight line proportioning will be used to determine the share of indirect and overhead cost to be allocated as subcontracts to SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB.**

4. The following individual will administer the subcontracting program:

Name: Kevin Rogers  
Title: Principal  
Telephone: 913.647.9400

This individual's specific duties, as they relate to the firm's subcontracting program are as follows:

General overall responsibility for this company's Small Business Program, the development, preparation and execution of individual subcontracting plans and for monitoring performance relative to contractual subcontracting requirements contained in this plan, including but not limited to:

- Developing and maintaining bidders' lists of SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB from all possible sources.
- Ensuring that procurement packages are structured to permit SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB to participate to the maximum extent possible.
- Assuring inclusion of SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB in all solicitations for products or services, which they are capable of providing.
- Reviewing solicitations to remove statements, clauses, etc., which may tend to restrict or prohibit SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB participation.
- Ensuring periodic rotation of potential subcontractors on bidders' lists.

- (f) Ensuring that the bid proposal review board documents its reasons for rejecting low bids submitted by SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB.
  - (g) Ensuring the establishment and maintenance of records of solicitations and subcontract award activity.
  - (h) Attending or arranging for attendance of company counselors at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, etc.
  - (i) Conducting or arranging for conduct of motivational training for purchasing personnel pursuant to the intent of Public Laws 99-661 and 100-180.
  - (j) Monitoring attainment of proposed goals.
  - (k) Preparing and submitting periodic subcontracting reports required.
  - (l) Coordinating contractor's activities during the conduct of compliance reviews by Federal Agencies.
  - (m) Coordinating the conduct of contractor's activities involving its SB, SDB, WOSB, HBCU/MI, HUBZone SB and SDVOSB subcontracting program.
  - (n) Additions to (or deletions from) the duties specified above are as follows:
5. The following efforts will be taken to assure that SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB will have an equitable opportunity to compete for subcontracts:
- (a) Outreach efforts will be made as follows:
    - (i) Contacts with minority and small business trade associations
    - (ii) Contacts with business development organizations
    - (iii) Attendance at small and minority business procurement conferences
    - (iv) Sources will be requested from SBA's PRO-Net system.
  - (b) The following internal efforts will be made to guide and encourage buyers:
    - (i) Workshops, seminars and training programs will be conducted
    - (ii) Activities will be monitored to evaluate compliance with this subcontracting plan.
  - (c) SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB source lists, guides and other data identifying SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB will be maintained and utilized by buyers in soliciting subcontracts.
  - (d) Additions to (or deletions from) the above listed efforts are as follows:

Sources will be requested from Central Contractor Registration (CCR) system
6. The contractor agrees that the clause entitled Utilization of Small Business Concerns will be included in all subcontracts, which offer further subcontracting opportunities, and all subcontractors except small business concerns who receive subcontracts in excess of \$500,000 will be required to adopt and comply with a subcontracting plan similar to this one. Such plans will be reviewed by comparing them with the provisions of Public Law 95-507 and assuring that all minimum requirements of an acceptable subcontracting plan have been satisfied. The acceptability of percentage goals shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB contractors and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports, and/or, as time and availability of funds permit, periodic visits to subcontractors facilities to review applicable records and subcontracting program progress.
7. The contractor agrees to submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of

compliance by the bidder with the subcontracting plan and with the clause entitled Utilization of Small Business Concerns contained in the contract.

8. The contractor agrees that he will maintain at least the following types of records to document compliance with this subcontracting plan:
- (a) SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB lists, guides and other data identifying SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB vendors.
  - (b) Organizations contacted for SB, SDB, WOSB, HBCU/MI, HUBZone SB, VOSB and SDVOSB sources.
  - (c) On a contract-by-contract basis, records on all subcontract solicitations over \$100,000, indicating on each solicitation (1) whether SBs were solicited, and if not, why not; (2) whether SDBs were solicited, and if not, why not; (3) whether WOSBs were solicited, and if not, why not; (4) whether HBCU/MI concerns were solicited and if not, why not; (5) whether HUBZone SBs were solicited and if not, why not; (6) whether SDVOSBs were solicited, and if not, why not; and (7) reasons for the failure of solicited SB, SDB, WOSB, HBCU/MI, HUBZone SBs, VOSB and SDVOSB to receive the subcontract award.
  - (d) Records to support other outreach efforts: Contacts with Minority and Small Business Trade Associations, attendance at small and minority business procurement conferences and trade fairs, etc.
  - (e) Records to support internal activities to guide and encourage buyers: Workshops, seminars, training programs, monitoring activities to evaluate compliance, etc.
  - (f) On a contract-by-contract basis, records to support subcontract award data to include name and address or subcontractor.
  - (g) Records to be maintained in addition to the above are as follows:

Advertising in local newspapers and number of responses for each SB type



### 3.1.7 Unauthorized Aliens Rider

Contract No. UE-16-0026  
Contract Date: 4 December 2016

#### **RIDER TO SUBCONTRACT**

By execution of this RIDER TO SUBCONTRACT, Subcontractor affirmatively states that it is not in violation of any State or Federal laws prohibiting “knowing” employment of “unauthorized aliens”, and further, that it shall not violate said laws in the future.

**Subcontractor**

  
\_\_\_\_\_

By: Eric Salomone

Its: Vice President

### 3.1.7 Unauthorized Aliens Rider

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### SUBCONTRACTOR AFFIDAVIT

State of Texas )  
 )  
 ) ss  
County of Collin )  
 )

Now this 12th day of September, 2017, the undersigned, being first duly sworn, deposes and says:

1. The undersigned is more than 18 years of age and is duly authorized as the

Vice President of Icon Construction, Inc.  
(subcontractor corporate officer title) (name of subcontractor)

to make this affidavit on behalf of Icon Construction, Inc.  
(name of subcontractor)

2. Icon Construction, Inc. does hereby certify, under penalty of  
(name of subcontractor)  
perjury, that its employees are lawfully present in the United States.

FURTHER THE AFFIANT SAYETH NOT

**Subcontractor**



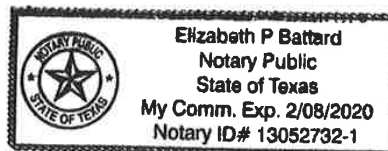
On this 12th day of September in the year 2017, before me,  
Elizabeth Battard, a Notary Public in and for said State, personally appeared  
Eric Salomone, known to me to be the person who executed the within affidavit,  
and acknowledged to me that he/she executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the  
county and State aforesaid, the day and year first above written.

  
Notary Public

My Commission Expires: 2-08-2020

(05DEC12 Version)



Insight 00331

**RIDER TO SUBCONTRACT**

By execution of this RIDER TO SUBCONTRACT, Subcontractor affirmatively states that it is not in violation of any State or Federal laws prohibiting “knowing” employment of “unauthorized aliens”, and further, that it shall not violate said laws in the future.

**Subcontractor**

Signature of John Q Subcontractor

By:

John Q Subcontractor

Its:

President

**SUBCONTRACTOR AFFIDAVIT**

State of Kansas )  
 )  
 ) ss  
County of Johnson )  
 )

Now this 9th day of November, 20 11, the undersigned, being first duly sworn, deposes and says:

1. The undersigned is more than 18 years of age and is duly authorized as the President of ABC Electric Inc  
(subcontractor corporate officer title) (name of subcontractor)  
to make this affidavit on behalf of ABC Electric Inc.  
(name of subcontractor)
2. ABC Electric does hereby certify, under penalty of  
(name of subcontractor)  
perjury, that its employees are lawfully present in the United States.

FURTHER THE AFFIANT SAYETH NOT

**Subcontractor**

Signature of John Q Subcontractor

On this 9th day of November in the year 20 11, before me,  
Steve Smith, a Notary Public in and for said State, personally appeared  
John Q Subcontractor, known to me to be the person who executed the within affidavit,  
and acknowledged to me that he/she executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and State aforesaid, the day and year first above written.

Signature of Steve Smith

Notary Public

My Commission Expires: 1/1/2013

### 3.1.8 Labor Standards Rider

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### 52.222-11 Subcontracts (Labor Standards).

As prescribed in [22.407](#)(a), insert the following clause:

##### SUBCONTRACTS (LABOR STANDARDS) (JULY 2005)

(a) *Definition.* “Construction, alteration or repair,” as used in this clause, means all types of work done by laborers and mechanics employed by the Subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the “site of the work” as defined in the FAR clause at [52.222-6](#), Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of work” definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (a)(1)(ii) of the FAR clause at [52.222-6](#), Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at [52.222-6](#), in the “site of the work” definition).

(b) The Subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

(1) Davis-Bacon Act;

(2) Contract Work Hours and Safety Standards Act—Overtime Compensation (if the clause is included in this contract);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination—Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Davis-Bacon and Related Act Regulations; and

(11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by the Subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed [Standard Form \(SF\) 1413](#), Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed [SF 1413](#) for such additional subcontract.

(e) The Subcontractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

#### **52.222-6 Davis-Bacon Act.**

As prescribed in [22.407\(a\)](#), insert the following clause:

#### DAVIS-BACON ACT (JULY 2005)

(a) Definition.—“Site of the work”—

(1) Means—

(i) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraph (a)(1)(i), or the “secondary site of the work” as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Subcontractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be

alleged to exist between the Subcontractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the Subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subcontractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Subcontractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Subcontractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall

refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subcontractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Subcontractor does not make payments to a trustee or other third person, the Subcontractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Subcontractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subcontractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.**

As prescribed in [22.305](#), insert the following clause:

##### **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (JULY 2005)**

(a) *Overtime requirements.* No Subcontractor employing laborers or mechanics (see Federal Acquisition Regulation [22.300](#)) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The Subcontractor is liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Subcontractor is liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Subcontractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

(1) The Subcontractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those



required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Subcontractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Subcontractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts*. The Subcontractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Subcontractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

#### **52.222-9 Apprentices and Trainees.**

As prescribed in [22.407\(a\)](#), insert the following clause:

##### APPRENTICES AND TRAINEES (JULY 2005)

###### (a) Apprentices.

(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where Subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the

Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity*. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

## **52.222-8 Payrolls and Basic Records.**

As prescribed in [22.407\(a\)](#), insert the following clause:

### **PAYROLLS AND BASIC RECORDS (FEB 1988)**

(a) Payrolls and basic records relating thereto shall be maintained by the Subcontractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs

reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional [Form WH-347](#) (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the—

Superintendent of Documents  
U.S. Government Printing Office  
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by Subcontractor and all of its subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Subcontractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional [Form WH-347](#) shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Subcontractor or its subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Subcontractor or its subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Subcontractor or its subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Subcontractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**52.222-10 Compliance with Copeland Act Requirements.**

As prescribed in [22.407](#)(a), insert the following clause:

COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Subcontractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

**52.222-7 Withholding of Funds.**

As prescribed in [22.407](#)(a), insert the following clause:

WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Subcontractor under this contract or any other Federal contract with the same Subcontractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Subcontractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subcontractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Subcontractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**52.222-12 Contract Termination—Debarment.**

As prescribed in [22.407](#)(a), insert the following clause:

CONTRACT TERMINATION—DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

**52.222-14 Disputes Concerning Labor Standards.**

As prescribed in [22.407](#)(a), insert the following clause:

DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Subcontractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**52.222-13 Compliance with Davis-Bacon and Related Act Regulations.**

As prescribed in [22.407\(a\)](#), insert the following clause:

COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

**52.222-15 Certification of Eligibility.**

As prescribed in [22.407\(a\)](#), insert the following clause:

CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Subcontractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Subcontractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

### **3.1.9 Restrictions on Certain Foreign Purchases Rider**

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### **FAR 52.225-13 - RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUNE 2008)**

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Subcontractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

(c) The Subcontractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

### 3.1.10 FAR and DFARS Incorporation Rider

Contract No. UE-16-0026

Contract Date: 04 December 2016

When the products or services furnished under this Subcontract are furnished in connection with a U.S. Government prime contract or subcontract, the following Federal Acquisition Regulation (FAR) and Department of Defense FAR Supplement (DFARS) clauses identified below shall also apply to this Subcontract, as required by terms of the Contract Documents or by operation of law or regulation. Said FAR and DFARS clauses are incorporated into the Subcontract by reference, with the same force and effect as if they were given in full text. The effective version of each FAR or DFARS clause shall be the same version as appears in Contractor's prime contract, or higher-tier subcontract under which this Subcontract is issued. In the event that there is no such equivalent clause in Contractor's prime contract or higher-tier subcontract, the date shall be the regulatory date in effect as of the date of this Subcontract.

The applicability and interpretation of each clause are subject to any specific parenthetical statement following its title. In the event of a conflict between these FAR or DFARS provisions and the terms of this Subcontract, the terms in this Subcontract shall control.

Subcontractor agrees to negotiate in good faith with Contractor to amend and incorporate into this Subcontract any additional clauses as Contractor may deem necessary in order to comply with the clauses of the Contract Documents or a higher tier subcontract. If any such amendment causes an increase or decrease in the cost of, or the time required for, performance of any part of this Subcontract, an equitable adjustment shall be made by Contractor pursuant to the "Changes" section of this Subcontract.

In all FAR and DFARS clauses listed below, the terms "Government", "Contractor", and "Contracting Officer" shall be revised to suitably identify Contractor and Subcontractor and affect the proper intent of the clause, except where further clarified or modified in the parenthetical that follows each clause. Notwithstanding the foregoing, nothing herein shall be construed to mean that the Contractor may modify or limit any rights the United States Government may have as set forth in the FAR and DFARS clauses below. Nor shall anything herein be construed to provide Subcontractor with right that only the United States Government has the authority to grant or perform, such as in FAR 52.227-1 and FAR 52.227-2. All Subcontractor contract with the Owner or any higher-tier subcontractor relating to this Subcontract shall be through or coordinated with Contractor

#### A. Clauses Applicable to All Subcontracts and Purchase Orders

Clause	Description	Notes
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Mar 2009)	
52.204-2	Alt II Security Requirements (Aug 1996) - Alternate II APR 1984	
52.204-4	Printed or Copied Double-Sided on Recycled Paper AUG 2000	
52.204-7	Central Contractor Registration APR 2008	
52.204-9	Personal Identity Verification of Contractor Personnel SEP 2007	
52.211-10	Commencement, Prosecution, and Completion of Work (Apr 1984)	
52.211-12	Liquidated Damages - Construction (Sep 2000)	
52.211-13	Time Extensions SEP 2000	
52.215-2	Audit and Records - Negotiation	
52.215-2 Alt I	Audit and Records - Negotiation	
52.215-17	Waiver of Facilities Capital Cost of Money OCT 1997	
52.215-19	Notification of Ownership Changes (Oct 1997)	
52.215-21 Alt IV	Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data--Modifications (Oct 1997) - Alternate IV	
52.216-18	Ordering (Oct 1995)	
52.216-19	Order Limitations (Oct 1995)	
52.216-22	Indefinite Quantity (Oct 1995)	
52.217-8	Option to Extend Services (Nov 1999)	
52.217-9	Option to Extend the Term of the Contract (Mar 2000)	
52.222-3	Convict Labor JUN 2003	
52.222-6	Davis Bacon Act JUL 2005	If subcontract may include laborers and mechanics
52.222-7	Withholding of Funds FEB 1988	
52.222-8	Payrolls and Basic Records FEB 1988	
52.222-9	Apprentices and Trainees JUL 2005	
52.222-10	Compliance with Copeland Act Requirements FEB 1988	
52.222-11	Subcontracts (Labor Standards) JUL 2005	
52.222-12	Contract Termination-Debarment FEB 1988	
52.222-13	Compliance with Davis-Bacon and Related Act Regulations. FEB 1988	
52.222-14	Disputes Concerning Labor Standards FEB 1988	
52.222-15	Certification of Eligibility FEB 1988	

52.222-27	Affirmative Action Compliance Requirements for Construction	
52.222-30	Davis-Bacon Act--Price Adjustment (None or Separately Specified Method)	If subcontract may include laborers and mechanics
52.222-32	Davis-Bacon Act--Price Adjustment (Actual Method) DEC 2001	If subcontract may include laborers and mechanics
52.223-3	Hazardous Material Identification And Material Safety Data JAN 1997	
52.223-5	Pollution Prevention and Right-to-Know Information AUG 2003	
52.223-6	Drug-Free Workplace MAY 2001	
52.223-11	Ozone-Depleting Substances (May 2001)	
52.223-12	Refrigeration Equipment and Air Conditioners MAY 1995	
52.225-9	Buy American Act - Constructino Materials (Feb 2009)	
52.225-11	Buy American Act - Constructino Materials Under Trade Agreements (Aug 2009)	
52.225-13	Restrictions on Certain Foreign Purchases JUN 2008	
52.225-21	Required Use of American Iron, Steel, and Manufactured Goods - Buy American Act - Constructon Materials (Mar 2009)	
52.225-23	Required Use of American Iron, Steel, and Manufactured Goods - Buy American Act - Constructon Materials Under Trade Agreements (Mar 2009)	
52.226-1	Utilization Of Indian Organizations And Indian-Owned Economic Enterprises	
52.227-4	Patent Indemnity-Construction Contracts DEC 2007	
52.228-1	Bid Guarantee (Sep 1996)	
52.228-2	Additional Bond Security OCT 1997	
52.228-11	Pledges Of Assets SEP 2009	
52.228-12	Prospective Subcontractor Requests for Bonds OCT 1995	
52.228-14	Irrevocable Letter of Credit DEC 1999	
52.228-15	Performance and Payment Bonds--Construction NOV 2006	
52.229-2	North Carolina State and Local Sales and Use Tax APR 1984	
52.229-3	Federal, State And Local Taxes APR 2003	
52.232-5	Payments under Fixed-Price Construction Contracts SEP 2002	
52.232-17	Interest OCT 2008	
52.232-18	Availability Of Funds APR 1984	
52.232-23	Assignment Of Claims JAN 1986	
52.232-27	Prompt Payment for Construction Contracts OCT 2008	
52.232-33	Payment by Electronic Funds Transfer--Central Contractor Registration	
52.233-1	Disputes JUL 2002	
52.233-3	Protest After Award AUG 1996	
52.233-4	Applicable Law for Breach of Contract Claim OCT 2004	
52.236-1	Performance of Work by the Contractor (Apr 1984)	
52.236-2	Differing Site Conditions APR 1984	
52.236-3	Site Investigation and Conditions Affecting the Work APR 1984	
52.236-4	Physical Data (Apr 1984)	
52.236-5	Material and Workmanship APR 1984	
52.236-6	Superintendence by the Contractor APR 1984	
52.236-7	Permits and Responsibilities NOV 1991	
52.236-8	Other Contracts APR 1984	
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	
52.236-10	Operations and Storage Areas APR 1984	
52.236-11	Use and Possession Prior to Completion APR 1984	
52.236-12	Cleaning Up APR 1984	
52.236-13	Accident Prevention NOV 1991	
52.236-13 Alt I	Accident Prevention (Nov 1991) - Alternate I NOV 1991	
52.236-14	Availability and Use of Utility Services APR 1984	
52.236-15	Schedules for Construction Contracts APR 1984	
52.236-17	Layout of Work APR 1984	
52.236-21	Specifications and Drawings for Construction FEB 1997	
52.236-21 Alt I	Specifications and Drawings for Construction (Feb 1997) - Alternate I	
52.236-22	Design Within Funding Limitations (Apr 1984)	
52.236-25	Requirements for Registration of Designers JUN 2003	
52.236-26	Preconstruction Conference FEB 1995	
52.242-14	Suspension of Work APR 1984	
52.243-4	Changes JUN 2007	
52.244-2	Subcontracts	
52.244-6	Subcontracts for Commercial Items APR 2010	
52.246-12	Inspection of Construction AUG 1996	



52.246-21	Warranty of Construction MAR 1994	
52.248-3	Value Engineering-Construction SEP 2006	
52.249-10	Default (Fixed-Price Construction) APR 1984	
52.249-14	Excusable Delays APR 1984	
52.252-2	Clauses Incorporated by Reference (Feb 1998)	
52.253-1	Computer Generated Forms JAN 1991	
252.201-7000	Contracting Officer's Representative DEC 1991	
252.203-7002	Requirement to Inform Employees of Whistleblower Rights JAN 2009	
252.204-7000	Disclosure Of Information DEC 1991	
252.204-7003	Control Of Government Personnel Work Product APR 1992	
252.204-7004 Alt A	Central Contractor Registration (52.204-7) Alternate A SEP 2007	
252.205-7000	Provision Of Information To Cooperative Agreement Holders DEC 1991	
252.215-7000	Pricing Adjustments DEC 1991	
252.222-7000	Restriction On Employment Of Personnel MAR 2000	
252.222-7001	Right Of First Refusal Of Employment--Closure of Military Installations	
252.222-7002	Compliance With Local Labor Laws (Overseas) JUN 1997	
252.222-7004	Compliance With Spanish Social Security Laws and Regulations	For work in Spain
252.222-7005	Prohibition on Use of Nonimmigrant Alien--Guam SEP 1999	For work in Guam
252.223-7001	Hazard Warning Labels (Dec 1991)	
252.223-7004	Drug Free Work Force SEP 1988	
252.223-7006	Prohibition On Storage And Disposal Of Toxic And Hazardous Materials	
252.225-7002	Qualifying Country Sources As Subcontractors APR 2003	
252.225-7004	Report of Intended Performance Outside the United States and Canada--Submission after Award	
252.225-7021	Trade Agreements NOV 2009	
252.225-7041	Correspondence in English JUN 1997	
252.225-7043	Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States	
252.225-7044	Balance of Payments Program--Construction Material JAN 2009	
252.225-7045	Balance of Payments Program--Construction Material Under Trade Agreements	
252.227-7022	Government Rights (Unlimited) MAR 1979	
252.227-7023	Drawings and Other Data to become Property of Government MAR 1979	
252.227-7033	Rights in Shop Drawings APR 1966	
252.228-7004	Bonds or Other Security (Dec 1991)	
252.229-7002	Customs Exemptions (Germany) JUN 1997	
252.229-7011	Reporting of Foreign Taxes--U.S. Assistance Programs SEP 2005	
252.232-7003	Electronic Submission of Payment Requests and Receiving Reports	
252.232-7004	DOD Progress Payment Rates OCT 2001	
252.232-7008	Assignment of Claims (Overseas) JUN 1997	
252.232-7010	Levies on Contract Payments DEC 2006	
252.233-7001	Choice of Law (Overseas) JUN 1997	
252.236-7000	Modification Proposals-Price Breakdown DEC 1991	
252.236-7001	Contract Drawings and Specifications (Aug 2000)	
252.236-7005	Airfield Safety Precautions DEC 1991	
252.243-7002	Requests for Equitable Adjustment MAR 1998	
252.247-7023	Transportation of Supplies by Sea MAY 2002	
52.232-5000	Payment for Materials Delivered Off-Site (Mar 1995) -- EFARS	

**B. Clauses Applicable to Subcontracts and Purchase Orders over \$10,000**

Clause	Description	Notes
52.222-21	Prohibition Of Segregated Facilities FEB 1999	
52.222-23	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction (Feb 1999)	
52.222-26	Equal Opportunity MAR 2007	
52.228-3	Worker's Compensation Insurance (Defense Base Act) APR 1984	

**C. Clauses Applicable to Subcontracts and Purchase Orders over \$15,000**

Clause	Description	Notes
52.222-36	Affirmative Action For Workers With Disabilities JUN 1998	

**D. Clauses Applicable to Subcontracts and Purchase Orders over \$30,000**

Clause	Description	Notes
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	Not commercially available off-the-shelf items

**E. Clauses Applicable to Subcontracts and Purchase Orders over \$100,000**

Clause	Description	Notes
52.203-7	Anti-Kickback Procedures JUL 1995	
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	
52.222-35	Equal Opportunity For Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	
52.222-37	Employment Reports On Special Disabled Veterans, Veterans Of The Vietnam Era, and Other Eligible Veterans	
52.223-14	Toxic Chemical Release Reporting AUG 2003	If subcontract is for other than commercial items

**F. Clauses Applicable to Subcontracts and Purchase Orders over \$150,000**

Clause	Description	Notes
52.202-1	Definitions JUL 2004	
52.203-3	Gratuities APR 1984	
52.203-5	Covenant Against Contingent Fees APR 1984	
52.203-6	Restrictions On Subcontractor Sales To The Government SEP 2006	
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity JAN 1997	
52.219-8	Utilization of Small Business Concerns MAY 2004	
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation	If subcontract may include laborers and mechanics
52.227-1	Authorization and Consent DEC 2007	
52.227-2	Notice And Assistance Regarding Patent And Copyright Infringement	
52.228-5	Insurance - Work On A Government Installation JAN 1997	
52.242-13	Bankruptcy JUL 1995	
52.249-2 Alt I	Termination for Convenience of the Government (Fixed-Price) (May 2004) - Alternate I	
252.203-7001	Prohibition On Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	
252.209-7004	Subcontracting With Firms That Are Owned or Controlled By The Government of a Terrorist Country	
252.225-7012	Preference For Certain Domestic Commodities DEC 2008	

**G. Clauses Applicable to Subcontracts and Purchase Orders over \$500,000**

Clause	Description	Notes
252.226-7001	Utilization of Indian Organizations and Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	

**H. Clauses Applicable to Subcontracts and Purchase Orders over \$650,000**

Clause	Description	Notes
52.219-9	Small Business Subcontracting Plan JUL 2010	
52.219-16	Liquidated Damages-Subcontracting Plan JAN 1999	
252.219-7003	Small Business Subcontracting Plan (DOD Contracts) APR 2007	
252.225-7006	Quarterly Reporting of Actual Contract Performance Outside the United States	

**I. Clauses Applicable to Subcontracts and Purchase Orders over \$700,000**

Clause	Description	Notes
52.215-15	Pension Adjustments and Asset Reversions OCT 2004	
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions	
252.243-7001	Pricing Of Contract Modifications DEC 1991	

**J. Clauses Applicable to Subcontracts and Purchase Orders over \$5,000,000**

Clause	Description	Notes
52.203-13	Contractor Code of Business Ethics and Conduct APR 2010	Applicable if the period of performance is more than 120 days
52.203-14	Display of Hotline Poster(s) DEC 2007	

### **3.1.12 Restrictions on Subcontractor Sales to the Government Rider**

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006) FAR 52.203-6

(a) Except as provided in (b) of this clause, the Subcontractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this subcontract which exceed the simplified acquisition threshold.

### 3.1.13 Toxic Chemical Rider

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### FAR 52.223-14 - TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)

(a) Unless otherwise exempt, the Subcontractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) ([42 U.S.C. 11023\(a\)](#) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) ([42 U.S.C. 13106](#)). The Subcontractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Subcontractor-owned or -operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, [42 U.S.C. 11023\(b\)\(1\)\(A\)](#);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, [42 U.S.C. 11023\(f\)](#) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094.

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C ([42 U.S.C. 6921](#), *et seq.*)), or [5169](#), or [5171](#), or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

(5) The facility is not located in the United States or its outlying areas.

(c) If the Subcontractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—

(1) The Subcontractor shall notify the Contracting Officer; and

(2) The Subcontractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall—

(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Subcontractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR [Part 2](#), the Contractor shall—

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR [52.223-13](#), Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

**DFARS 252.223-7006 - PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)**

(a) *Definitions.* As used in this clause—

(1) “Storage” means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) “Toxic or hazardous materials” means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR Part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Subcontractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

(c) With respect to treatment or disposal authorized pursuant to 10 U.S.C. 2692(b)(9), and notwithstanding any other provision of the contract, the Subcontractor assumes all financial and environmental responsibility and liability resulting from any treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation. The Subcontractor shall indemnify, defend, and hold the Government harmless for all costs, liability, or penalties resulting from the Subcontractor’s treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation.

(d) The Subcontractor shall include this clause, including this paragraph (d), in each subcontract which requires, may require, or permits a subcontractor to treat or dispose of non-DoD-owned toxic or hazardous materials as defined in this clause.

### 3.1.14 Anti-Kickback Procedures Rider

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### 52.203-7 Anti-Kickback Procedures.

##### ANTI-KICKBACK PROCEDURES (JUL 1995)

###### (a) *Definitions.*

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Contractor, Prime Contractor Employee, Subcontractor, or Subcontractor Employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a Prime Contract or in connection with a Subcontract relating to a Prime Contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime Contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor" as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor Employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor Employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 ([41 U.S.C. 51-58](#)) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a Prime Contractor to the United States or in the contract price charged by a Subcontractor to a Prime Contractor or higher tier Subcontractor.

(c)

(1) The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the Prime Contract and/or (ii) direct that the Prime Contractor withhold from sums owed a Subcontractor under the Prime Contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Subcontractor agrees to incorporate the substance of this clause, including paragraph (c)(5), in all subcontracts under this contract which exceed \$100,000.



### 3.1.15 Overtime Compensation Rider

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### FAR 52.222-4 - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (JULY 2005)

(a) *Overtime requirements.* The Subcontractor or any subcontractor employing laborers or mechanics (see Federal Acquisition Regulation [22.300](#)) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Subcontractor and any subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Subcontractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Subcontractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Subcontractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Subcontractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) Payrolls and basic records.

(1) The Subcontractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Subcontractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Subcontractor or its subcontractors also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Subcontractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Subcontractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

### **3.1.16 Utilization of IO, IOEE and NH SBC Rider**

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### **DFARS 252.226-7001 - UTILIZATION OF INDIAN ORGANIZATIONS, INDIAN-OWNED ECONOMIC ENTERPRISES, AND NATIVE HAWAIIAN SMALL BUSINESS CONCERNS (SEP 2004)**

(a) *Definitions.* As used in this clause--

“Indian” means—

(1) Any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c); and

(2) Any “Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C. Chapter 17.

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

“Interested party” means a contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

“Native Hawaiian small business concern” means an entity that is—

(1) A small business concern as defined in Section 3 of the Small Business Act (15 U.S.C. 632) and relevant implementing regulations; and

(2) Owned and controlled by a Native Hawaiian as defined in 25 U.S.C. 4221(9).

(b) The Subcontractor shall use its best efforts to give Indian organizations, Indian-owned economic enterprises, and Native Hawaiian small business concerns the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the contract.

(c) The Contracting Officer and the Subcontractor, acting in good faith, may rely on the representation of an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.

(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to—

(1) For matters relating to Indian organizations or Indian-owned economic enterprises:

U.S. Department of the Interior

Bureau of Indian Affairs

Attn: Chief, Division of Contracting and

Grants Administration

1849 C Street NW, MS-2626-MIB

Washington, DC 20240-4000.

The BIA will determine the eligibility and will notify the Contracting Officer.

(2) For matters relating to Native Hawaiian small business concerns:

Department of Hawaiian Home Lands

PO Box 1879

Honolulu, HI 96805.

The Department of Hawaiian Home Lands will determine the eligibility and will notify the Contracting Officer.

(e) No incentive payment will be made—

(1) While a challenge is pending; or

(2) If a subcontractor is determined to be an ineligible participant.

(f)(1) The Subcontractor, on its own behalf or on behalf of a subcontractor at any tier, may request an incentive payment in accordance with this clause.

(2) The incentive amount that may be requested is 5 percent of the estimated cost, target cost, or fixed price included in the subcontract at the time of award to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(3) In the case of a subcontract for commercial items, the Subcontractor may receive an incentive payment only if the subcontracted items are produced or manufactured in whole or in part by an Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(4) The Subcontractor has the burden of proving the amount claimed and shall assert its request for an incentive payment prior to completion of contract performance.

(5) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the estimated cost, target cost, or fixed price included in the subcontract awarded to the Indian organization, Indian-owned economic enterprise, or Native Hawaiian small business concern.

(6) If the Subcontractor requests and receives an incentive payment on behalf of a subcontractor, the Subcontractor is obligated to pay the subcontractor the incentive amount.

(g) The Subcontractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding \$500,000.

### 3.1.17 Protecting the Government's Interest Rider

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### FAR 52.209-6

PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (DEC 2010)

(a) *Definition*. "Commercially available off-the-shelf (COTS)" item, as used in this clause—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition in FAR [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), such as agricultural products and petroleum products.

(b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Subcontractor shall not enter into any subcontract, in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.

(c) The Subcontractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Subcontractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(d) A corporate officer or a designee of the Subcontractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR [9.404](#) for information on the Excluded Parties List System). The notice must include the following:

(1) The name of the subcontractor.

(2) The Subcontractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Subcontractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(e) *Subcontracts*. Unless this is a contract for the acquisition of commercial items, the Subcontractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—

(1) Exceeds \$30,000 in value; and

(2) Is not a subcontract for commercially available off-the-shelf items.

### 3.1.18 Transportation of Supplies by Sea Rider

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### 252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAY 2002)

(a) *Definitions.* As used in this clause—

- (1) “Components” means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.
- (2) “Department of Defense” (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.
- (3) “Foreign flag vessel” means any vessel that is not a U.S.-flag vessel.
- (4) “Ocean transportation” means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.
- (5) “Subcontractor” means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.
- (6) “Supplies” means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.
  - (i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.
  - (ii) “Supplies” includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items;

construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if—

(i) This contract is a construction contract; or

(ii) The supplies being transported are—

(A) Noncommercial items; or

(B) Commercial items that—

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself



constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

- (1) Type, weight, and cube of cargo;
- (2) Required shipping date;
- (3) Special handling and discharge requirements;
- (4) Loading and discharge points;
- (5) Name of shipper and consignee;
- (6) Prime contract number; and
- (7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

- (1) Prime contract number;
- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Description of commodity;
- (8) Gross weight in pounds and cubic feet if available;
- (9) Total ocean freight in U.S. dollars; and
- (10) Name of steamship company.

(f) The Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

- (1) No ocean transportation was used in the performance of this contract;
- (2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;
- (3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or
- (4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

	ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
<b>TOTAL</b>			

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

**DFARS 252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)**

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor—

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause, including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties—

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for—

(i) Noncommercial items; or

(ii) Commercial items that—

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

### **3.1.19 Reporting of Foreign Taxes Rider**

Contract No. UE-16-0026

Contract Date: 4 December 2016

#### **252.229-7011 REPORTING OF FOREIGN TAXES – U.S. ASSISTANCE PROGRAMS (SEP 2005)**

(a) *Definition.* “Commodities,” as used in this clause, means any materials, articles, supplies, goods, or equipment.

(b) Commodities acquired under this contract shall be exempt from all value added taxes and customs duties imposed by the recipient country. This exemption is in addition to any other tax exemption provided through separate agreements or other means.

(c) The Subcontractor shall inform the foreign government of the tax exemption, as documented in the Letter of Offer and Acceptance, country-to-country agreement, or interagency agreement.

(d) If the foreign government or entity nevertheless imposes taxes, the Subcontractor shall promptly notify the Contracting Officer and shall provide documentation showing that the foreign government was apprised of the tax exemption in accordance with paragraph (c) of this clause.

(e) The Subcontractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for commodities that exceed \$500.

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

(1) United States of America for the Use and Benefit of ICON CONSTRUCTION, INC., a Texas Corporation

(b) County of Residence of First Listed Plaintiff Collin County, Texas  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joyce W. Lindauer, Joyce W. Lindauer Attorney, PLLC, 12720 Hillcrest Road, Suite 625, Dallas, Texas 75230  
(972) 503-4033

**DEFENDANTS**

(1) UNITED EXCEL CORPORATION, a Kansas Corporation, and (2) ARCH INSURANCE COMPANY, a Missouri Insurance Company

County of Residence of First Listed Defendant Jackson County, Missouri  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input checked="" type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

40 U.S.C.A. Section 3133, et seq.

Brief description of cause:

Seeking payment under a bond issued in relation to a federal construction project

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

1,469,978.69

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/01/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Joyce W. Lindauer

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE